TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 173.

WILLIAM M. KING ET AL., HEIRS AT LAW OF JAMES TURNBULL, DECEASED, PLAINTIFF IN ERROR,

vs.

ARIO PARDEE, EDWARD ROBERTS, ET AL., EXECUTORS OF A. S. ROBERTS, DECEASED, EDWARD ROBERTS, JR, ET AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

FILED OCTOBER 9, 1875.

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INDEX.

	Original.	Print.
Docket entries	1	1
Jury	3	2
Verdict	4	2
Judgment	4	2
Deposition of M. B. Hulber	20	8
E. B. King	25	9
T. M. Drysdale	40	15
William Berrington	42	16
J. H. Leedon	44	17
H. S. Cochran	46	18
Charge of court	50	19
Bond	57	22
Writ of error	60	23
Citation	62	24
Clerk's certificate	64	24
Warrant and survey to Mary Kunkel	66	25
Patent to M. Kunkel	69	27
Deed—treasurer of Luzerne County to Cist	72	28
Judgment—Luzerne County	80	31
Deed—Hurlbut to Conyngham	90	35
Testimony of James Turnbull	97	38
Deed—Drysdale et al. to Roberts	99	39
Testimony of O. H. Wheeler	116	49
Assignment of error	118	49
Value	119	50

1 Among the records and judicial proceedings of the circuit court of the United States for the western district of Pennsylvania, at Williamsport, in the county of Lycoming, in the State of Pennsylvania, may be found the following words and figures, viz:

Copy of appearance-docket entry.

JAMES TURNBULL, J'R, A SUBJECT OF THE Republic of Mexico,
vs.
ARIO PARDEE, A CITIZEN OF THE STATE OF Pennsylvania. } No. 14.

June term, 1871.—Summons in ejectment for the one undivided eighth part or interest in a tract of land situate in Hazel Township, Luzerne County, Penn'a, containing four hundred and thirty-nine and a half acres & allowance, &c.

Issued February 24, 1871; returnable the first Monday of April next. Eo die.—Præcipe, with description, filed.

March 1, 1871.—Served personally on Ario Pardee, and left with him a true copy. So answers L. Martin, dept. marshal. $10.00.

Att'y, 20.00. Marsh., p'd by pl't'ff' att'y, 10.00; def't's bill, 247.10; taking deposition, 10.00; clerk, 37.70; jury fee, p'd by W. H. A., 4.00.

Re'd of O. H. Wheelen my costs, $10.00.

L. MARTIN.

And now, to wit, March 10, 1871, Armstrong & Linn appear for the defendant in the above-stated action. Appearance filed March 13, 1871.

2 And now, to wit, June 20, 1871, on motion, and by request of George W. Woodward, esq., upon cause shown, the court grant him leave to withdraw his appearance for the plaintiff in this case, and to appear for the defendant, if he shall desire so to do. Præcipe for rule for commission and interrogatories filed September 15, 1871. Commission issued to William M. McKnight, notary public of the city of Philadelphia, October 9th, 1871. Plea, not guilty, filed. Notice of trial accepted by Armstrong & Linn, att'ys for defendant. (See paper filed April 11, 1872.) June 10, 1872.—Cont'd by consent.

And now, to wit, the 26th day of June, 1872, on motion of defendant's counsel, and by leave of court first had and obtained, the names of Edward Roberts, and of Anthony C. Roberts, Algernon S. Roberts, Perceval Roberts, and George T. Roberts, executors of Algernon S. Roberts, deceased, all residents and citizens of the city of Philadelphia, in the State of Pennsylvania, under whom Ario Pardee, the defendant above named, holds possession of the land claimed in this action by virtue of a certain lease to be made parties defendants in this action, with the same effect as if the action had originally been brought against the said Ario Pardee, and the said Edward Roberts, and the said Anthony
3 C. Roberts, Algernon S. Roberts, Perceval Roberts, and George T. Roberts, executors of Algernon S. Roberts, deceased, jointly, and the writ had been duly served upon them all, and so duly returned. (See paper filed June 26, 1872. Notice of trial for June term, 1873, & order for trial at same term, filed April 28th, 1873.)

June 16, 1873.—Continued by consent for reasons shown in paper filed Depositions filed June 3, 1874. Agreement of counsel as to evidence filed June 16, 1874. Substitution of Edward Roberts, j'r, & others as defendants, filed June 16, 1874.

And now, June 16, 1874, a jury of the country being called, came, to wit: James Hood, D. R. Corbus, Thomas A. Seward, James Allison, William A. Mickey, Thomas Smith, S. L. McHenry, Hamilton Larimer, R. K. Campbell, Llewellyn Ellsbree, John Hague, & Jacob Sawyer, twelve good and lawful men of the western district of Pennsylvania, who having been duly summoned, returned, balloted for, and empanelled, were severally sworn and affirmed to try the issue herein joined.

And now, to wit, the 16th day of June, 1874, that, by leave of court first had and obtained, the names of Edward Roberts, j'r, Howard Roberts, and Edward Browning, executors and trustees of Edward Roberts, deceased, all residents and citizens of the city of Philadelphia, in the
4 State of Pennsylvania, under whom Ario Pardee, the defendant above named, claims to hold possession of the land claimed in this action by virtue of a certain lease, be made parties defendant in this action, with the same effect as if the action had originally been brought against the said Ario Pardee, and Edward Roberts, j'r, Howard Roberts, and Edward Browning, executors & trustees of Edward Roberts, deceased, jointly, and the writ had been duly served upon them all, & so duly returned.

And now, June 19, 1874, the jury say they find in favor of the defendants and against the plaintiff the land described in the writ in this case, with six cents damages and six cents costs; and so they say all.

Whereupon it is considered and adjudged by our circuit court of the United States that the said defendants do recover against the said James Turnbull, j'r, a subject of the Republic of Mexico, as well the tract of land described in the writ, for which this ejectment was brought, as his said damages and costs, which they the said defendants sustained about this suit in this behalf, adjudged to them by the said court aforesaid, and which said damages and costs in the whole amount to the sum of three hundred and twenty-eight $\frac{80}{100}$ dollars, ($328.80c.)
5 Judgment signed June 25, 1874.

HEPBURN McCLURE, *Clerk.*

Bills of exceptions to charge of the court filed June 30th, 1874.
Defendant's bill of costs filed June 19, 1875; amount, $247.10.

And now, to wit, the 7th day of July, 1875, counsel for plaintiff having suggested the death of the plaintiff, James Turnbull, j'r, on motion and by leave of court first had and obtained, the names of William M. King, Elizabeth B. King, Margaret Carter, of Penn'a; William Drysdale, of Kentucky; Walter S. Drysdale, of New York; James M. Drysdale, Thomas M. Drysdale, of Philadelphia; and Sophia Furness, of New York; heirs at-law of said James Turnbull, dec'd, are substituted as parties plaintiff in this action with the same effect as if the action had originally been brought in their names. Papers filed July 7, 1875. Bond, approved July 7, 1875, (W. Strong, J.,) filed July 7, 1875, in the sum of one thousand dollars. Præcipe for writ of error filed July 9, 1875. Writ of error issued July 9, 1875. Citation to defendants to appear at the Supreme

Court of the United States at Washington, D. C., on the 2d Monday of October, 1875, filed July 9, 1875. Same day notice of citation accepted by Armstrong & Leinn, att'ys for defendants.

6 *Copy of præcipe.*

In the circuit court of the United States for the western district of Penn'a.

COMMONWEALTH OF PENNSYLVANIA, *ss:*

JAMES TURNBULL, J'R, A SUBJECT OF THE Republic of Mexico,
vs.
ARIO PARDEE, A CITIZEN OF THE STATE OF Pennsylvania.

Issue summons in ejectment against the defendant for the one undivided eighth part or interest in the following-described tract of land, situate in Hazel Township, Luzerne County, Penn'a, surveyed in the warrantee name of Mary Kunkle, adjoining lands on the north in the warrantee name of John A. Winters; on the east by Conrad Horn and Joachim Wegman; on the south by John Kunkel and Christian Kunkel, and on the west by Christian Kunkel, Sarah Kunkel, and John Kunkel, containing four hundred and thirty-nine and a half acres & allowance, &c. Ret'ble the first Monday of April next.

Feb'y 24, 1871.

J. W. MAYNARD & CO.,
GEO. W. WOODWARD,
O. H. WHEELER,
Pl'ff's Att'y'.

To HEPBURN MCCLURE, *Clerk.*

7 (Endorsement on præcipe:) James Turnbull, j'r, vs. Ario Pardee. No. 14, June term, 1871. Præcipe for ejectment. Maynard & Wheeler, pl'ff's att'y'. Filed February 24, 1871.

Copy of summons.

UNITED STATES,
Western District of Penn'a, sct:

The President of the United States to the marshal of the western district of Pennsylvania, greeting:

We command you that you summon Ario Pardee, a citizen of the State of Pennsylvania, late of your district, if he may be found therein, so that he may be and appear before the judges of the circuit court of the United States in and for the western district of Pennsylvania, in the third circuit, at a session of the same court to be holden at Williamsport on the first Monday of April next, then and there to answer a certain complaint made by James Turnbull, j'r, a subject of the Republic of Mexico,
8 that the said Ario Pardee hath now in his possession actual, a tract of land situate in Hazel Township, Luzerne County, and State of Pennsylvania, and bounded as follows, viz: The one undivided eighth part or interest in the following-described tract of land, situate in Hazel Township, Luzerne County, Penn'a, surveyed in the warrantee

name of Mary Kunkel, adjoining lands on the north in the warrantee name of John A. Winters; on the east by Conrad Horn and Joachim Wigman; on the south by John Kunkel and Christian Kunkel, and on the west by Christian Kunkel, Sarah Kunkel, and John Kunkel, containing four hundred and thirty-nine and a half acres and allowance, &c.; the right of possession or title to which he, the said James Turnbull, j'r, saith is in him and not in the said defendant; all of which the said plaintiff averreth, and is prepared to prove before our said court.

Hereof fail not, and have you then and there this writ.

Witness the honorable Salmon P. Chase, esquire, Chief Justice of the Supreme Court of the United States, at Williamsport, this twenty-fourth day of February, A. D. 1871, and in the 95th year of the Independence of the said United States.

HEPBURN McCLURE, *Clerk.*

9 (Endorsement on summons:) James Turnbull, j'r, a subject of the Republic of Mexico, vs. Ario Pardee, a citizen of the State of Pennsylvania. No. 14. June term, 1871. Summons in ejectment. March 1, 1871, served personally on Ario Pardee, and left with him a true copy. So answers A. M. Murdoch, U. S. marshal, per L. Martin, dep'ty marsh. Fees, $10. J. W. Maynard, O. H. Wheeler, G. W. Maynard, pl'ff's at'ys.

Copy of appearance.

In the circuit court of the United States.

JAMES TURNBULL, J'R, A CITIZEN OF THE REPUBLIC OF MEXICO,
vs.
ARIO PARDEE, A CITIZEN OF THE STATE OF PENN'A. } No. 14. June t., 1871.

And now, to wit, the 10th day of March, A. D. 1871, we do hereby appear for the defendant in the above-stated action.

ARMSTRONG & LINN,
Att'ys for Def't.

(Endorsement:) James Turnbull, j'r, vs. Ario Pardee. No. 14. June term, 1871. Appearance filed March 13, 1871. Armstrong & Linn.

10 *Copy of præcipe for rule for commission and interrogatories.*

In the circuit court of the United States for the western district of Pennsylvania.

JAMES TURNBULL, J'R, A SUBJECT OF THE REPUBLIC OF MEXICO,
vs.
ARIO PARDEE, A CITIZEN OF THE STATE OF PENNSYLVANIA. } No. 14. June term, 1871.

Enter rule in the above case on behalf of the plaintiff for commission to W'm M. McKnight, esq., notary public, of Philadelphia, P'a, on fifteen days' notice.

MAYNARD, ENTERMARKS & PACKER,
Attorneys for Plaintiff.

To HEPBURN McCLURE, Esq.,
Clerk U. S. Circuit Court.

Interrogatories to be exhibited to Edward King, Elizabeth B. King, and M'r's Mary B. Hubber, witnesses to be produced, sworn or affirmed, and examined on the part of the plaintiff in the above cause, before a commissioner to be named in a commission to be issued out of the said court in pursuance of the above rule.

11 Interrogatory first. Where do you now reside, and what is your age?

Interrogatory second. Did you know Alexander Turnbull, senior? Where did he live, and when and where did he die?

Interrogatory third. Did you know Margaret Turnbull, wife of Alexander Turnbull, senior? When and where did she die?

Interrogatory fourth. How many children did Alexander and Margaret Turnbull have surviving them? What were their names, and how old were they at the time of the death of their father?

Interrogatory fifth. Did James Turnbull and Margaret Turnbull, two of the children of Alexander Turnbull, senior, ever marry? Are they now living or dead; and, if dead, when and where, and at what ages did they die?

Interrogatory sixth. Did you know Jane Turnbull, one of the children of Alexander Turnbull, senior? When and where did she marry?

12 Interrogatory seventh. Where did William Drysdale and Jane, his wife, live? Did they have children? If so, what were their names?

Interrogatory eighth. Are William Drysdale and Jane, his wife, living or dead? If dead, when, where, and at what ages did they die?

Interrogatory ninth. Did you know Alexander Turnbull, j'r, son of Alexander Turnbull, senior, before mentioned?

Interrogatory tenth. Where did Alexander Turnbull, j'r, marry, and when did he marry, and was he afterward divorced from his wife? If so, when?

Interrogatory eleventh. Did Alexander Turnbull, j'r, and wife have a child? If so, when was he born, and what was his name?

Interrogatory twelfth. When and where did Alexander Turnbull, j'r, die, and at what age?

Interrogatory thirteenth. Is the divorced wife of Alexander Turnbull, j'r, still living? If so, where and under what name, since her divorce from her husband?

13 Interrogatory fourteenth. Is James Turnbull, j'r, son of Alexander Turnbull, j'r, still living? If so, where is he living, and what is his present age?

Interrogatory fifteenth. Are you connected or related, by blood or marriage, to any of the above-named descendants of Alexander Turnbull, senior? If so, in what manner and to whom?

Interrogatory sixteenth. Do you know any other matter or thing in relation to the subject-matter of the above interrogatories? If so, state the same fully and at large, as if thereto particularly interrogated.

MAYNARD, ENTERMARKS & PACKER,
Attorneys for Plaintiff.

Messrs. ARMSTRONG & LINN,
Attorneys for Defendant:

Please take notice that a copy of the above interrogatories has been this day filed in the clerk's office of the circuit court of the United States for the western district of Pennsylvania, at Williamsport, to be exhibited to witnesses to be called, sworn or affirmed, and examined on the part

of the plaintiff, on a commission to be issued to the city of Philadelphia, Penn'a.

MAYNARD, ENTERMARKS & PACKER,
Attorneys for Pl'ff.

Commissioner on part of plaintiff at Phila., W'm M. McKnight, 241 Dock st.

SEPT. 15, 1871.

14 (Endorsed:) U. S. circuit court w. dis. of Penn'a, No. 14, June term, 1871. James Turnbull, j'r, a subject of the republic of Mexico, vs. Ario Pardee, a citizen of the State of Penn'a. Præcipe for rule for commission and interrogatories. Filed Sept'r 15, 1871.

Copy of depositions.

UNITED STATES OF AMERICA,
Western District of Pennsylvania, ss:

The President of the United States to William M. McKnight, notary public, of the city of Philadelphia, Penn'a, greeting:

Know you that, in confidence of your prudence and fidelity, we have appointed you, and by these presents do give unto you full power and authority, in pursuance of a rule made in the circuit court of the United States for the western district of Pennsylvania, in a certain cause therein depending, wherein James Turnbull, j'r, a subject of the republic
15 of Mexico, is plaintiff, and Ario Pardee, a citizen of the State of Pennsylvania, is defendant, to call before you, at a certain day and place by you for that purpose to be appointed, all and every person and persons who may be named to you, as well on the part of plaintiff as on the part of the defendant, or either of them, as witnesses in the said cause; and then and there to examine each of the said witnesses on their oaths or affirmations touching the premises, and to reduce their testimony to writing, and when you shall have so done you are to send the same before us, in our circuit court aforesaid, at Williamsport, together with the interrogatories and answers thereunto, under your hand and seal plainly and distinctly set, together with this writ.

Witness the honorable Salmon P. Chase, Chief-Justice of the Supreme Court of the United States, at Williamsport, this 9th day of October, A. D. one thousand eight hundred and seventy-one, and of the Independence of the United States the ninety-sixth.

[L. S.] HEPBURN McCLURE, *Clerk.*

16 Circuit court United States, western district of Pennsylvania.

JAMES TURNBULL, J'R, A SUBJECT OF THE republic of Mexico, *vs.* ARIO PARDEE, A CITIZEN OF THE STATE OF Pennsylvania.	No. 14. June term, 1871. Ejectment.

Interrogatories to be exhibited to Edward King, Elizabeth B. King, and M'r's Mary B. Hubber, witnesses to be produced, sworn or affirmed, and examined on the part of the plaintiff in the above cause, under a commission to be issued out of the circuit court of the United States for the western district of Pennsylvania, to William McKnight, esq., under a rule for a commission on the part of the plaintiff, filed September 15, A. D. 1871.

Interrogatory first. Where do you now reside, and what is your age?

Interrogatory second. Did you know Alexander Turnbull, senior? Where did did he live, and when and where did he die?

Interrogatory third. Did you know Margaret Turnbull, wife of Alexander Turnbull, senior? When and where did she die?

17 Interrogatory fourth. How many children did Alexander and Margaret Turnbull leave surviving them? What were their names, and how old were they at the time of the death of their father?

Interrogatory fifth. Did James Turnbull and Margaret Turnbull, two of the children of Alexander Turnbull, senior, ever marry? Are they now living or dead; and, if dead, when and where, and at what age, did they die?

Interrogatory sixth. Did you know Jane Turnbull, one of the children of Alexander Turnbull, senior? When and where did she marry?

Interrogatory seventh. Where did William Drysdale and Jane, his wife, live? Did they have children? If so, what were their names?

Interrogatory eighth. Are William Drysdale and Jane, his wife, living or dead? If dead, when, where, and at what ages did they die?

Interrogatory ninth. Did you know Alexander Turnbull, j'r, son of Alexander Turnbull, senior, before mentioned?

18 Interrogatory tenth. Whom did Alexander Turnbull, j'r, marry, and when did he marry, and was he afterward divorced from his wife? If so, when?

Interrogatory eleventh. Did Alexander Turnbull, j'r, and wife, have a child? If so, when was he born and what was his name?

Interrogatory twelfth. When and where did Alexander Turnbull, j'r, die, and at what age?

Interrogatory thirteenth. Is the divorce' wife of Alexander Turnbull, j'r, still living? If so, where and under what name, since her divorce from her husband?

Interrogatory fourteenth. Is James Turnbull, j'r, son of Alexander Turnbull, j'r, still living? If so, where is he living and what is his present age?

Interrogatory fifteenth. Are you connected or related by blood or marriage to any of the above named descendants of Alexander Turnbull, senior? If so, in what manner and to whom?

19 Interrogatory sixteenth. Do you know any other matter or thing in relation to the subject-matters of the above interrogatories? If so, state the same fully and at large as if thereto particularly interrogated.

MAYNARD, ENTERMARKS & PACKER,
Attorneys for Plaintiff.

Mess. ARMSTRONG & LYNN,
Attorneys for Defendant:

Please take notice that a copy of the above interrogatories has been this day filed in the clerk's office of the circuit court of the United States for the western district of Pennsylvania, at Williamsport, to be exhibited to witnesses to be called, sworn, or affirmed and examined on the part of the plaintiff, on a commission to be issued to the city of Philadelphia, Penn'a.

MAYNARD, ENTERMARKS & PACKER,
Attorneys for Pl'ff.

Commissioner on part of plaintiff at Philad'a, W'm M. McKnight, 24 Dock street.

SEPT. 15, 1871.

UNITED STATES,
Western District of Penn'a, ss:

I, Hepburn McClure, clerk of the circuit court of the United States, at Williamsport, do hereby certify the foregoing to be a true copy of the interrogatories, and also of the notice for taking the same, in the above-stated case, as full and entire as the same remains on file in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Williamsport, this ninth day of October, A. D. 1871.

[L. S.] HEPBURN McCLURE, *Clerk.*

Depositions of witnesses produced, sworn or affirmed, and examined on the nineteenth day of October, in the year of our Lord one thousand eight hundred and seventy-one, at the residence of M'r's Elizabeth B. King, No. 40 North Sixteenth street, in the city of Philadelphia, in the State of Pennsylvania, by virtue of a commission issuing out of the United States circuit court for the western district of Pennsylvania, to William McKnight, notary public for the State of Pennsylvania, residing in the city of Philadelphia aforesaid, directed for the examination of witnesses in a certain cause pending in said court, wherein James Turnbull, j'r, a subject of the republic of Mexico, is plaintiff, vs. Ario Pardee, a citizen of the State of Pennsylvania, *is* defendant, No. 14, June term, 1871.

MARY B. HUBBER, residing No. 11 Bond street, in the city of New York, aged seventy (70) years, being produced, sworn, and examined on behalf of the plaintiff, deposeth as follows:

21 1st. To the first interrogatory on the part of the plaintiff, answers as follows: I reside with my sister, at No. 11 Bond street, in the city of New York. My age is seventy years.

2d. To the second interrogatory on the part of the plaintiff, answers as follows: I knew Alexander Turnbull, senior, well. He formerly lived in the city of Philadelphia; when he died he lived near Hazelton, Luzerne County, State of Pennsylvania. He died July 10th, A. D. 1826, and was buried at Conyngham, near Hazelton, in Pennsylvania.

3d. To the third interrogatory on the part of the plaintiff, answers as follows: I did know Margaret Turnbull, wife of Alexander Turnbull, senior. She died in Philadelphia in the year A. D. 1832.

4th. To the fourth interrogatory on the part of the plaintiff, answers as follows: They left four children surviving, viz, the first, James; second, Jane; third, Alexander; and the fourth, Margaret. And as near as I can tell, James was thirty-seven years of age, Jane was thirty-two years, Alexander twenty-seven, and Margaret twenty-two years, at the time of the death of their father.

22 5th. To the fifth interrogatory on the part of the plaintiff, answers as follows: James and Margaret, children of Alexander Turnbull, senior, were never married. They are both dead. James died at Monroeton, Bradford County, Pennsylvania, in the year A. D. 1855, aged about sixty-four (64) years; and Margaret died in Philadelphia, in the year A. D. 1868, aged about sixty-four (64) years.

6th. To the sixth interrogatory on the part of the plaintiff, answers as follows: I know *James* [Jane] Turnbull. She married William Drysdale in the year 1817, in Philadelphia.

7th. To the seventh interrogatory on the part of the plaintiff, answers as follows: William Drysdale and wife lived in Philadelphia. They have four children now living, viz, William, Walter S., James T., and Thomas M.

8th. To the eighth interrogatory on the part of the plaintiff, answers as follows: William Drysdale and wife are dead. William died
23 at Tamaqua, Penn'a, in 1856, aged about sixty-four (64) years, and his wife, Jane, died in Philadelphia in the year 1867, aged about seventy-four years.

9th. To the ninth interrogatory on the part of the plaintiff, answers as follows: I knew Alexander Turnbull, junior, son of Alexander Turnbull, senior.

10th. To the tenth interrogatory on the part of the plaintiff, answers as follows: Alexander Turnbull, junior, and myself were married in Philadelphia on the first day of November, A. D. 1821. He was divorced from me in 1834.

11th. To the eleventh interrogatory on the part of the plaintiff, answers as follows: We had one son, James Turnbull, junior. He was born the twenty-eighth day of October, A. D. 1822. We had several other children, but all of them died in infancy.

12th. To the twelfth interrogatory on the part of the plaintiff, answers as follows: Alexander Turnbull, junior, died at a hospital in Philadelphia, in the year A. D. 1835, at the age of 37 years.

24 13th. To the thirteenth interrogatory on the part of the plaintiff, answers as follows: I was the wife of Alexander Turnbull, junior, and after the divorce was granted I assumed my maiden name, which was Mary B. Hubber.

14th. To the fourteenth interrogatory on the part of the plaintiff, answers as follows: James Turnbull, junior, son of Alexander Turnbull, junior, is still living. He is living at Mazatlan, Sinaloa *County*, republic of Mexico, and his age is forty-eight years, (48.)

15th. To the fifteenth interrogatory on the part of the plaintiff, answers as follows: I am related, being once married to Alexander Turnbull, junior, the son of Alexander Turnbull, senior, and the father of James Turnbull, junior, the plaintiff in this case.

16th. To the sixteenth interrogatory on the part of the plaintiff, answers as follows: Alexander Turnbull, senior, lived and died on the lands he owned near Hazelton, Pennsylvania, and that he died without making any will, to the best of my knowledge and belief; and that my son, James Turnbull, junior, left here for Mexico in 1850; and that
25 a correspondence has been kept up between he and I ever since.

MARY B. HUBBER.

Sworn and subscribed before me this nineteenth day of October, A. D. 1871.

W. M. McKNIGHT,
Commissioner.

ELIZABETH B. KING, residing at No. 40 North Sixteenth street, in the city of Philadelphia and State of Pennsylvania, aged seventy-five years, (75 y.,) being produced, sworn, and examined on behalf of the plaintiff, deposeth as follows:

1st. To the first interrogatory on the part of the plaintiff, answers as follows: I reside at No. 40 North Sixteenth street, in the city of Philadelphia. My age is seventy-five years.

2d. To the second interrogatory on the part of the plaintiff, answers as follows: I knew Alexander Turnbull, senior. He formerly lived in the city of Philadelphia, and died near Conyngham, Penn'a, to the best of my knowledge.

26 3d. To the third interrogatory on the part of the plaintiff, answers as follows: I knew Margaret Turnbull, wife of Alexander Turn

bull, senior. She died in Philadelphia, to the best of my knowledge, in the year 1832.

4th. To the fourth interrogatory on the part of the plaintiff, answers as follows: They left four children surviving. Their names were as follows: James, Jane, Alexander, and Margaret. Their ages were, at the death of their father, *were* James, thirty-five; Jane, thirty-three; Alexander, twenty-seven; and Margaret, twenty-two.

5th. To the fifth interrogatory on the part of the plaintiff, answers as follows: James and Margaret, two of the children of Alexander Turnbull, senior, were never married. They are both dead. I have been told James died at Monroeton, Bradford County, P'a, in the year 1855, at the age of sixty-four years; and Margaret died in Philadelphia, in the year A. D. 1868, aged about sixty-four years.

6th. To the sixth interrogatory on the part of the plaintiff,
27 answers as follows: I knew Jane Turnbull. She was married to William Drysdale in the year A. D. 1817, in the city of Philadelphia.

7th. To the seventh interrogatory on the part of the plaintiff, answers as follows: William Drysdale and wife lived in Philadelphia. They have four children now living, viz: William, Walter S., James T., and Thomas M.

8th. To the eighth interrogatory on the part of the plaintiff, answers as follows: William Drysdale and his wife are dead. William Drysdale died in Tamaqua, Penn'a, in the year 1836, aged about sixty-four years, and his wife, Jane, died in Philadelphia, in the year A. D. 1867, aged about seventy-four years.

9th. To the ninth interrogatory on the part of the plaintiff, answers as follows: I knew Alexander Turnbull, junior, son of Alexander Turnbull, senior.

10th. To the tenth interrogatory on the part of the plaintiff, answers as follows: Alexander Turnbull, junior, married my sister, Mary B. Hubber, on the first day of November, A. D. 1821, by the Rev. James Wilson, pastor of the First Presbyterian Church, in Philadelphia.
28 I was present at the ceremony. She was afterwards divorced from her husband, in the year A. D. 1834.

11th. To the eleventh interrogatory on the part of the plaintiff, answers as follows: They had a child named James Turnbull, junior, who was born on the twenty-eighth day of October, A. D. 1822. They have no other children living.

12th. To the twelfth interrogatory on the part of the plaintiff, answers as follows: Alexander Turnbull, junior, died in a hospital in Philadelphia, in the year A. D. 1835, at the age of thirty-six years.

13th. To the thirteenth interrogatory on the part of the plaintiff, answers as follows: The wife of Alexander Turnbull, junior, is still living, and has taken her maiden name, Mary B. Hubber, since the divorce.

14th. To the fourteenth interrogatory on the part of the plaintiff, answers as follows: James Turnbull, junior, son of Alexander and Mary, is still living, and resides at Mazatlan, Mexico. His age is forty-eight years, (48 y'rs.)

29 15th. To the fifteenth interrogatory on the part of the plaintiff, answers as follows: I am no ways related by blood or marriage to Alexander Turnbull, senior, or any of his descendants.

16th. To the sixteenth interrogatory on the part of the plaintiff, answers as follows: She knoweth not.

ELIZABETH B. KING.

Sworn and subscribed before me this nineteenth day of October, A. D. 1871.

W'M M. McNIGHT,
Commissioner.

I hereby certify that the above and foregoing named witnesses were duly qualified and examined at the time and place stated in the caption above, and subscribed their depositions in my presence.

W'M M. McKNIGHT,
Commissioner.

In testimony whereof I have hereunto set my hand and affixed my notarial seal, at Philadelphia, in the State of Pennsylvania, this nineteenth day of October, A. D. one thousand eight hundred and seventy-one.

[L. S.] W'M M. McKNIGHT,
Notary Public.

Fees, $15.00. Paid by O. H. Wheeler, esq., att'y for plaintiff.

30 (Endorsement:) No. 14. June term, 1871. James Turnbull, j'r, vs. Ario Pardee. Circuit court of United States. Depositions. Filed October 23, 1871.

Copy of plea not guilty.

U. S. circuit court, west. dist. of Penn'a.

JAMES TURNBULL, J'R, *vs.* ARIO PARDEE. } No. 14. June term, 1871.

And now, November 16, 1871, the defendant in the above-entitled suit, by Armstrong & Linn, his attorneys, come and defend the force and injury, &c., when, &c., and say that he is not guilty of the said supposed trespass and ejectment above laid to his charge, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against him. And of this he, the said defendant, puts himself upon the country, &c.

ARMSTRONG & LINN,
Att'ys for Def't.

31 (Endorsement on plea not guilty:) James Turnbull, j'r, vs. Ario Pardee. No. 14. June term, 1871. Plea not guilty. Filed Nov. 16, 1871.

Copy of notice of trial.

U. S. circuit court, west. dist. of Penn., at Williamsport.

JAMES TURNBULL, J'R, A SUBJECT OF THE republic of Mexico, *vs.* ARIO PARDEE, A CITIZEN OF THE STATE of Penn'a. } No. 14. June term, 1871.

Mess'rs ARMSTRONG & LINN,
Att'ys for Defendant:

GENTLEMEN: You are hereby notified that the above case has been

ordered for trial at the next term of the United States circuit court for the western district of Penn'a, to be held at Williamsport upon the third Monday of June, 1872.

MAYNARD, ENTERMARKS & PARKER,
Att'ys for Pl'ff.

WILLIAMSPORT, *April* 11, '72.

32 (Endorsement on notice of trial:) James Turnbull, j'r, vs. Ario Pardee. No. 14. June T., 1871. Notice of trial. Accepted April 11, 1872. Filed April 11, 1872.

April 11, 1872, received copy of this notice by hand of H. McClure, esq.
ARMSTRONG & LINN,
Att'ys for Def't.

Copy of substitution.

In the circuit court of the United States for the western district of Pennsylvania.

JAMES TURNBULL, J'R, A SUBJECT OF THE republic of Mexico,
vs.
ARIO PARDEE, A CITIZEN OF THE STATE of Pennsylvania.
} June term, 1871. No. 14.

And now, to wit, on the 25th day of June, 1872, on motion of defendant's counsel and by leave of court first had and obtained, the names of Edward Roberts and of Anthony C. Roberts, Algernon S. Roberts, Percival Roberts and George T. Roberts, executors of Algernon S. Roberts, deceased, all residents and citizens of the city of Philadelphia, in
33 the State of Pennsylvania, under whom Ario Pardee, the defendant above named, holds possession of the land claimed in this action by virtue of a certain lease, to be made parties defendant in this action with the same effect as if the action had originally been brought against the said Ario Pardee, and the said Edward Roberts, and the said Anthony C. Roberts, Algernon S. Roberts, Percival Roberts and George T. Roberts, executors of Algernon Roberts, deceased, jointly, and the writ had been duly served upon them all, and so duly returned.

(Endorsement:) Turnbull vs. Pardee. U. S. cir. c't. No. 14. June T., 1871. Substitution. Motion for adding other names as parties defendant. Filed June 26, 1872.

Copy of continuance, &c.

TURNBULL
vs.
PARDEE ET AL.

C. C. U. S., W. D.,
Philadelphia, June 10, 1873:

34 DEAR SIR: The above-entitled cause is marked for trial for Monday, June 16, 1873, and stands first on the list. We represent the defendants, and were anxious to try the cause, but we are both members of the constitutional convention of this State, and do not feel justified in leaving it for several days together at the present time, when subjects of the greatest importance are being discussed and decided.

This is the only reason upon which we place our objection to a trial at the present time. The case was fixed for trial a year ago, when we were ready and anxious that it should have been tried, but it was continued to oblige the Hon. John W. Maynard, who is one of the plaintiff's counsel, and was too unwell to try. Our witnesses and clients were then at Williamsport; both of us were then present, and though both our clients and ourselves were very anxious to have a trial, we did not feel disposed to push the case on contrary to the wishes of M'r Maynard.

We are now told by the plaintiff's counsel that they will make every effort to force the case on notwithstanding our objection on the ground of public engagements with which they have been made acquainted.

We therefore respectfully ask of you to have the case continued for the reasons given by us. A copy of this letter has been sent to plaintiff's counsel.

We remain, with much respect,
(Signed)

G. W. BIDDLE.
M. H. ARMSTRONG.

Hon. M'M McKENNAN,
Williamsport, Penn'a.

35 We, the attorneys in this cause, agree that the within-named cause be continued without costs until June term, 1874.

Philad'a, June 11, 1873.

O. H. WHEELER,
J. S. BLACK,
Pl'ff's Att'ys.
GEO. W. BIDDLE,
W. H. ARMSTRONG,
Def't's Att'ys.

(Indorsed:) James Turnbull, j'r, vs. Ario Pardee. No. 14. June term, 1871. Continuance of cause, &c., as per reasons. Filed June 16, 1873.

Copy of notice of trial & order for trial.

In the circuit court of the United States for the western district of Pennsylvania.

JAMES TURNBULL, J'R, A SUBJECT OF THE Republic of Mexico,
vs.
ARIO PARDEE, A CITIZEN OF THE STATE OF Penn'a.
} No. 14. June T., 1871. Ejectment.

To Mess'rs ARMSTRONG & LINN,
Att'ys for Defendant:

You are hereby notified that the above-entitled case will be
36 ordered for trial at the next term of the circuit court of the United States, to be held on the third Monday of June next, at Williamsport, P'a.

MAYNARD, ENTERMARKS & PARKER,
Att'ys for Pl'ff.

W'MSPORT, P'A, *April* 22, 1873.

APRIL 23, 1873.—We accept the above written notice.

ARMSTRONG & LINN,
Att'ys for Def't.

To H. McCLURE, Esq.,
Clerk of Circuit Court, &c.:

Please put the above-entitled case on the list for trial at the next term of court.

April 28, 1873.

MAYNARD, ENTERMARKS & PARKER,
Att'ys for Pl'ff.

(Endorsement:) James Turnbull, j'r, vs. Ario Pardee. No. 14. June term, 1871. Notice of trial for June term, 1873, & order for trial. Filed April 28, 1873.

Copy of depositions.

In circ. c't of U. S., west. dist. of P'a.

JAMES TURNBULL, A CITIZEN OF THE REPUBLIC of Mexico,
vs.
ARIO PARDEE, A CITIZEN OF P'A. } No. 14. June T., 1871.

37 It is agreed that depositions of witnesses may be taken, on part of the plaintiff and defendant in above case, before B. S. Bentley, j'r, esq., as a commissioner, at his office in the city of Williamsport, P'a, on the 19th day of June, 1872, and to be continued by adjournment until the depositions are concluded, to be used and read with like effect in all respects, and subject to the same exceptions as if the witnesses were themselves present and examined on the trial of the cause.

MAYNARD, ENTERMARKS & PARKER,
Att'ys for Pl'ff.
ARMSTRONG & LINN, *Att'ys for Def'ts.*

JUNE 19, 1872.

Circ. c't of U. S., west. dist. of P'a.

JAMES TURNBULL, J'R, A CITIZEN OF REPUBLIC of Mexico,
vs.
ARIO PARDEE, A CITIZEN OF P'A. } No. 18. June T., 1871.

It is agreed that depositions of witnesses may be taken, on part of the plaintiff and defendant, in above case, before B. S. Bentley, j'r, esq., a commissioner, at his office in the city of Williamsport, P'a, on the 19th day of June, 1872, and to be continued by adjournment until the depositions are concluded, to be used and read with like effect in all respects, and subject to the same exceptions, as if the witnesses were them-
38 selves present and examined on the trial of the cause.

MAYNARD, ENTERMARKS & PARKER,
Att'ys for Pl'ff.
ARMSTRONG & LINN, *Att'ys for Def't.*

JUNE 19, 1872.

Circ. c't of U. S., west. dist. of P'a.

JAMES TURNBULL, A CITIZEN OF REPUBLIC OF Mexico,
vs.
ARIO PARDEE, CALVIN PARDEE, & J. GILLINGham Fell, citizens of P'a. } No. 20. June T., 1871.

It is agreed that depositions of witnesses may be taken, on part of the defendants and plaintiff, in above case, before B. S. Bentley, j'r, esq., as a commissioner, at his office in the city of Williamsport, on the 19th day of June, 1872, and to be continued by adjournment until the depositions as concluded, to be used and read with like effect in all respects, and subject to the same exceptions, as if the witnesses were themselves present and examined on the trial of the cause.

MAYNARD, ENTERMARKS & PARKER,
Att'ys for Pl'ff.
ARMSTRONG & LINN, *Att'ys for Def't.*

JUNE 19, 1872.

39 In the circuit court of the United States for the western district of Pennsylvania.

JAMES TURNBULL, A CITIZEN OF THE REPUBLIC of Mexico,
vs.
ARIO PARDEE, A CITIZEN OF PENNSYLVANIA. } No. 14 of June term, 1871.

In the circuit court of the United States for the western district of Pennsylvania.

JAMES TURNBULL, J'R, A CITIZEN OF THE REpublic of Mexico,
vs.
ARIO PARDEE, A CITIZEN OF PENNSYLVANIA. } No. 18 of June term, 1871.

In the circuit court of the United States for the western district of Pennsylvania.

JAMES TURNBULL, J'R, A CITIZEN OF THE REpublic of Mexico,
vs.
ARIO PARDEE AND J. GILLINGHAM FELL, CITIzens of Pennsylvania. } No. 20 of June term, 1871.

Depositions of witnesses taken before B. S. Bentley, j'r, at his office in the city of Williamsport, P'a, on the nineteenth day of June, 1872, by virtue and in pursuance of the annexed agreements of parties. Present: Hon. J. W. Maynard and O. H. Wheeler, esq., of counsel for plaintiffs, and A. T. McClintock, esq., and G. W. Biddle, esq., of counsel for defendants.

40 THOMAS M. DRYSDALE, M. D., a witness produced and sworn on behalf of defendant, deposeth and saith:

I am a practising physician, residing in the city of Philadelphia, P'a.

I am desirous of leaving Williamsport to-day. I am a son of William Drysdale, deceased. My father died in the month of June, 1856. I am acquainted with the handwriting of my father, and with his signature.

Question. Look on this paper, marked "Exhibit A, B. S. B., j'r," on the second page thereof, at the signature, William Drysdale, opposite the first seal, and state in whose handwriting the same is.

Witness answers: It is in the handwriting of my father, William Drysdale, deceased.

Question. Look at the signature, William Drysdale, to the receipt, dated August 20, 1846, on the same page of the same exhibit, and state in whose handwriting it is.

Witness answers: That is also in the handwriting of my father, William Drysdale.

Question. Look at the signature, William Drysdale, on the same page of the same exhibit, to the agreement dated Sept. 6, 1846, and state in whose handwriting it is.

Answer. It is the handwriting of William Drysdale, my father.

41 Question. Look at the signature, William Drysdale, on the third page of the same exhibit, to the receipt dated Philadelphia, Oct. 19, 1846, and say in whose handwriting it is.

Answer. It is in the handwriting of William Drysdale, me father. I was subpœnaed on the part of the defendant, and requested to produce all books, papers, and writings relating to the settlement of the account of William Drysdale, administrator of Alexander Turnbull, and all letters to said William Drysdale from persons claiming to be interested in said account. Not having such papers, letters, and documents in my possession, I have not produced them nor brought them with me. I had at the death of my father such papers in my possession as are called for in the subpœna. They were mainly burned; we destroyed them after having them examined. They were burned within a year or two, or longer, after the death of my father. Some time after my father's death I had these papers, or the most important of them, examined by George L. Crawford, of Philadelphia, he being my lawyer at the time, for the purpose of reclaiming them, if possible. I afterwards destroyed them, he telling me they were worthless. My brothers destroyed a good many of them, and I destroyed a good may of them. I have not

42 now in my possession, or under my control, any of the papers called for in the subpœna served upon me. I have none but some papers in reference to the Latimore tract, which, I understand, the Mess'rs Roberts are in nowise interested in. My brother, that I have just spoken of, resides in S't Louis, M'o. His name is James M. Drysdale. The only paper I think he has is the paper book in Drysdale's appeal.

Cross-examined by Hon. J. W. Maynard:

I was not present when the agreement, marked "Exhibit A, B. S. B., j'r," was executed. I did not see my father write his name therein.

T. M. DRYSDALE.

Witness sworn, deposition read over to him, and subscribed before me.

B. S. BENTLEY, J'R,
Commissioner.

WILLIAM BARRINGTON, sworn on the part of the defendant, deposeth and saith:

I reside in the city of Philadelphia, and am anxious to leave Williamsport to-day. My father's name was Charles Barrington. He is now de-

ceased, having died in September, 1853. He was a real-estate
43 broker. I was very familiar with his handwriting, having seen him write often, having been in his office with him a number of years.

Question. Look on the signature, Ch's Barrington, under the words "Sealed and delivered in the presence of us," on the second page of "Exhibit A;" also, the same signature as witness to the receipt dated August 20, 1846, on the same page of the same exhibit; also, the signature C. Barrington as witness to the agreement dated Sept. 5, 1846, on the same page of the same exhibit; also the signature C. Barrington as witness to the receipt dated Phila., Oct. 19, 1846, and state in whose handwriting, as witness, the signatures are, respectively.

Witness answers: I recognize the four signatures as being my father's. They are in his handwriting. The agreement marked "Exhibit A, B. S. B., j'r" is all in the handwriting of my father, excepting the receipt on the third page thereof, dated Oct. 19, 1846. I do not know in whose handwriting this receipt is.

Cross-examination declined.

W'M BARRINGTON.

44 Witness sworn, deposition read over to him, and subscribed before me.

B. S. BENTLEY, J'R,
Commissioner.

JACOB H. LEEDON, affirmed and examined on behalf of defendant, saith:

I reside in the city of Philadelphia, P'a, and am anxious to leave Williamsport to-day; I was regularly subpœnaed as a witness in these cases. I knew George F. Ecky; he was a clerk employed by A. S. & E. Roberts & Co.; he is now deceased; he has been dead more than four years; I can't say exactly how long. When M'r Ecky was in the employ of A. S. & E. Roberts & Co., I was a salesman in the employ of the same firm; I know M'r Ecky's handwriting, having frequently seen him write. I knew his signature, and would know it now.

Question. Look at the signature, Geo. F. Ecky, as witness to the agreement made August 20, 1846, marked "Exhibit A, B. S. B.,j'r," and to the signature, Geo. F. Ecky, as witness to the receipt dated August 20, 1846, both of said signatures being written on the second page of said "Exhibit A," and state in whose handwriting they are, respectively.

Witness answers: They are both the signatures of Geo. F.
45 Ecky; they are in his handwriting. I know the handwriting of Algernon S. Roberts, deceased, and am acquainted with the handwriting of Edward Roberts, who is now living. I am well acquainted with the signatures of these gentlemen: The signature Algernon S. Roberts, on the second page of Exhibit A, B. S. B., j'r to the agreement dated August 20, 1846, is in his handwriting; the signature Edw. Roberts, on the same page of the same exhibit, and to the same agreement, is in the handwriting of Edward Roberts. I know the handwriting of the receipt on the third page of the same exhibit, said receipt being dated Oct. 19, 1846. It is in the handwriting of Algernon S. Roberts, deceased. I know Alexander Ardley; he was a member of the firm of A. S. & E. Roberts & Co., in whose employ I was; I am well acquainted with his handwriting and signature; he is at present a very sick man; something like paralysis; he is unable to come to Williamsport; he could not stand the journey. The signature Alex. Ardley, as a witness to the paper marked "Exhibit B," is in the handwrit-

ing of Alexander Ardley. I know the signature of A. S. Roberts, j'r, as a witness to the same paper; I have seen him write very often. The signature A. S. Roberts, j'r, written twice as a witness to the said "Exhibit B," is the genuine signature of A. S. Roberts, j'r. He is a son of Algernon S. Roberts, deceased. The signatures Algernon S. Roberts and
46 Edward Roberts, opposite the seals affixed to the same paper, dated the 23d day of March, 1847, are in the proper handwriting of Algernon S. Roberts, deceased, and of Edward Roberts, respectively.

H. J. LEEDON.

Witness affirmed, deposition read over to him, and subscribed before—

B. S. BENTLEY, J'R,
Commissioner.

HENRY S. COCHRAN, being duly affirmed on the part of the defendants, saith:

I reside in Philadelphia, and have been subpœnaed in these cases on behalf of defendants; I am anxious to leave Williamsport to-day; I am a clerk in the employ of A. Pardee & Co., and have been so employed for over fourteen years; I am well acquainted with the handwriting of Ario Pardee, also with that of J. Gillingham Fell, who is M'r Pardee's partner, having seen them both write frequently. I witnessed the paper marked "Exhibit C, B. S. B., jr." The signature H. C. Cochran, as a witness to said paper, is my signature and in my handwriting. I know the handwriting of H. H. Wilson, the other witness to the same paper. The signature of H. H. Wilson, as attesting witness to said Exhibit "C," is his own genuine signature.

The signatures Ario Pardee and J. G. Fell, opposite the last
47 two seals on the said Exhibit "C," are in the handwriting of Ario Pardee and J. G. Fell, respectively. I saw and heard all the other parties who executed the said paper, Exhibit "C," to wit: A. Cuthbut Roberts, A. S. Roberts, Percival Roberts, G. Theo. Roberts, and Edward Roberts acknowledge their signatures to, and the execution of, the same papers by them, respectively, at the time I witnessed it. I know the signature of Ario Pardee, j'r; I have frequently seen him write. The signature Ario Pardee, j'r, opposite the first seal on paper Exhibit B, B. S. B., j'r, is in the handwriting of Ario Pardee, j'r. The signature of J. Gillingham Fell, opposite the second seal on the same paper, is in the handwriting of J. Gillingham Fell. I have heard that Lewis Davenport, whose name appears as the last subscribing witness to the same paper, Exhibit "B," is dead; he was a hotel-keeper in Hazelton, Luzerne Co., P'a.

Cross-examination declined.

H. C. COCHRAN.

Witness sworn, deposition read over to him, and subscribed before—

B. S. BENTLEY, J'R,
Commissioner.

I hereby certify that the above witnesses were duly qualified and examined at the time and place hereinbefore stated and subscribed
48 their depositions in my presence.

B. S. BENTLEY, J'R,
Commissioner.

(Endorsement:) James Turnbull, j'r, vs. Ario Pardee et al. No. 14, No. 18, No. 20. June term, 1871. Depositions filed June 3, 1874, (in

No. 14, June T. 1871.) Fees, $10; paid by W. H. Armstrong. B. S. Bentley, j'r, com'r.

Copy of substitution.

In the circuit court of the United States for the western district of Pennsylvania.

JAMES TURNBULL, J'R, SUBJECT OF THE Republic of Mexico,
vs.
ARIO PARDEE, A CITIZEN OF THE STATE OF Pennsylvania.
} June term, 1874. No. 14.

And now, to wit, the 16th day of June, 1874, that by leave of
49 court first had and obtained, the names of Edward Roberts, j'r, Howard Roberts, and Edward Browning, executors & trustees of Edward Roberts, deceased, all residents and citizens of the city of Philadelphia, in the State of Pennsylvania, under whom Ario Pardee, the defendant above named, claims to hold possession of the land claimed in this action, by virtue of a certain lease, be made parties defendant in this action, with the same effect as if the action had originally been brought against the said Ario Pardee and Edward Roberts, j'r, Howard Roberts, and Edward Browning, executors & trustees of Edward Roberts, deceased, jointly, and the writ had been duly served upon them all, and so duly returned.

(Endorsement:) Turnbull vs. Pardee. 14, June T., 1871. C. C., U. S., W. D. Substitution of Edward Roberts, j'r, and others as defendants. Filed June 16, 1874.

50 *Copy of charge of court.*

JAMES TURNBULL, J'R,
vs.
ARIO PARDEE ET AL.

The jury were instructed inter alia:

1. That though William Drysdale acquired the legal title to the land in controversy, by the deed of John N. Conyngham, to him dated July 16, 1828, and recorded Ja'y 13, 1832, yet he held in trust for the estate of which he was administrator, or rather for the heirs of the estate, (there being no creditors,) and held one undivided eighth part thereof for Alexander Turnbull, j'r, or his assigns; that this was not an express trust; that it was not declared in the deed to Conyngham, or to Drysdale, but that it was a trust which the law implied, growing out of the relation of the parties. Drysdale, then, was the legal owner, while at the same time there was an equitable right in the heirs of the elder Turnbull to require him to convey the property to them, or if he had sold it at an advance, to require him to account for the proceeds of his sale.

The right of Alex. Turnbull, j'r, and that of the plaintiff, who claims as his heir, is merely an equitable one. I will not, however, now instruct you that the plaintiff cannot recover in this ejectment, solely
51 for that reason, but I call your attention to the question whether the equity which was done, when the sheriff's sale was made to

Conyngham, and subject to which Drysdale took the land, survived until this suit was brought. Such rights do not live forever. If they are not asserted within a reasonable time they die, and generally what is a reasonable time is determined in analogy to the statute of limitations. If it be an implied equitable right to land, ordinarily, it cannot be enforced after twenty-one years.

It is true if a party in whom such a right is vested has no knowledge of its existence, or means of knowledge, the law admits of longer delay in asserting the right. Reference was then made to the evidence which the jury was directed to consider with the instruction that if they found the plaintiff's father, Alexander Turnbull, j'r, or the plaintiff had knowledge in 1828, when the trust arose, or in 1832, when the deed to Drysdale was recorded, or at any time more than twenty-one years before 1871, when this suit was brought, or that they, or either of them, had means of knowledge that Drysdale, the administrator, had taken the title to himself and therefore held it in trust, the claim was too stale, that any equity in the plaintiff's favor that may once have existed cannot now be enforced, and that the plaintiff cannot recover.

To all which the plaintiff then and there excepted, and his bill of extions is accordingly sealed.

June 17, 1874.

W. STRONG. [L. S.]

52 The jury was further instructed that by the act of assembly of Ap. 22, 1856, entitled "An act for the greater certainty of title and more secure enjoyment of real estate," it was enacted that no right of entry shall accrue or action be maintained to enforce any implied or resulting trust as to realty, but within five years after such equity or trust accrued, with the right of entry, unless such trust shall have been acknowledged by writing to subsist, by the party to be charged therewith within the said period, with a proviso that as to any one affected with a trust by reason of his fraud the limitation shall begin to run only from the discovery thereof, or when by reasonable diligence the party defrauded might have discovered the same, and with a further proviso that any person who would sooner be barred by the act should not be thereby barred for two years after its passage.

This act, the jury were instructed, embraced such a trust as the plaintiff is seeking to enforce in this action, and they were charged that if they found Drysdale was guilty of no fraud in taking the deed to himself, as he did, or even if he became a trustee by reason of his fraud, if they found that his fraud was discovered by the party defrauded, or might have been discovered by reasonable diligence, more than five years before 1871, the action could not be maintained, and the verdict should be for the defendants.

To which the plaintiff did then and there except, and his bill of exceptions is accordingly sealed.

June 17, 1874.

W. STRONG. [L. S.]

53 The jury were also instructed as follows:

The defendants also insist that they are protected by the general statute of limitations.

The verdict tends to show that when the Mess'rs Roberts bought the land in 1846, they put Pardee and Fell immediately into possession, as their tenants, and that these tenants have continued in possession ever since. You have heard the evidence; what it proves is for you. It is

not contradicted that these tenants sunk coal shafts and slopes on the land, built railroads, coal-breakers, numerous houses, a saw-mill, and cut timber over the whole tract. Was this an adverse, exclusive, notorious hostile and continued possession for twenty-one years before the suit was brought? If it was the plaintiff cannot recover; he is bound by the statute of limitations.

It is true no length of possession will protect a party against the entry or action of one in subordination to whom the possession has been held, and if the entry was in subordination to the title or right of another the possession is presumed to be continued subordinate until notice of adverse claim is brought home to the holder of the paramount title. But I see no evidence that the defendants entered in subordination to any right of the plaintiff. When we speak of a subordinate title we mean that the inferior title is in priority with another, as in case of a tenancy for years, life, at will, &c. There was no such entry
54 in this case. The Mess'rs Roberts put upon record at the beginning a deed declaring the entire le'se to be in themselves, and there is no evidence that either they or their tenants, Pardee and Fell, were acknowledged a superior right, or any right, in the plaintiff.

It is also true that the possession of one tenant in common is generally regarded as the possession of his co-tenant until an ouster has taken place, and an ouster must be proved or presumed from facts in proof. It is argued on behalf of the plaintiff that he was a tenant in common with the Mess'rs Roberts in 1846, when they entered by their tenants; certainly he was not of the legal estate; but if he was then a tenant in common with them, what is the legitimate effect of the evidence? It has been decided by the supreme court of this State that when one tenant in common enters on the whole and takes the profits, and claims the whole exclusively for twenty-one years, the jury ought to presume an ouster, though none be proved. (10 S. & R., 182; 9 Barr, 226; 13 S. & R., 356; 3 W., 77.)

The jury are therefore instructed that if they find from the evidence that the defendants entered upon the property in 1846, by themselves or their tenants, claiming it as their own exclusively, receiving its profits, and that they have maintained notorious, adverse, exclu-
55 sive, hostile, and uninterrupted possession of the entire tract ever since, the verdict should be for the defendants.

To which the plaintiff then and there excepted, and his bill of exceptions is accordingly sealed.

June 17, 1874.

W. STRONG. [L. S.]

The court also charged the jury that the plaintiff, claiming as he does as heir of his father, stands in no better situation than his father would stand in were he living and had this action been brought by him.

To which the plaintiff then and there excepted, and their bill of exceptions is sealed.

June 17, 1874.

W. STRONG. [L. S.]

In reference to the deed of Alexander Turnbull, j'r, to William King, dated Nov. 28, 1827, given in evidence by the defendants, the court remarked as follows:

"I do not perceive why this deed did not divest the grantor of all his interest in the land in controversy, and of all resulting interests, and why it would not be an insuperable obstacle in the way of his recovery

were he suing, and why it is not a bar to any recovery by the plaintiff, who sues as his heir, so I am requested by the defendants to instruct you. But as I wish to submit the case to you on the other points
56 to which I have called your attention, I decline giving the instruction asked. I will not then charge you that the deed to William King is in the way of the plaintiff's recovery.

To which the plaintiff then and there excepted, & his bill of exceptions accordingly sealed.

June 17, 1874.

W. STRONG. [L. S.]

(Endorsement:) James Turnbull, j'r, vs. Ario Pardee. No. 14. June term, 1871. Bills of exceptions to charge of the court. Filed June 30, 1874.

57 U. S. C. C., western dist. of Penn'a.

W'M M. KING, ELIZABETH B. KING, MARGARET Carter, W'm Drysdale, Walter S. Drysdale, James M. Drysdale, Thomas M. Drysdale, Sophia Furness, heirs at law of James Turnbull, deceased,	
vs.	No. 14. June term, 1871.
ARIO PARDEE, EDWARD ROBERTS, ANTHONY C. Roberts, Algernon S. Roberts, Percival Roberts, and George T. Roberts, executors of Algernon S. Roberts, dec'd, Edward Roberts, j'r, Howard Roberts, and Edward Browning, executors and trustees of Edward Roberts, dec'd.	

Know all men by these presents that we, Peter Herdic and H. B. Smith, are held and firmly bound unto Ario Pardee, Edward Roberts, Anthony C. Roberts, Algernon S. Roberts, Percival Roberts, and George T. Roberts, executors of Algernon S. Roberts, dec'd, Edward Roberts, j'r, Howard Roberts, and Edward Browning, executors and trustees of Edward Roberts, dec'd, in the sum of one thousand dollars, to be paid to the said defendants above named, their executors or administrators; to which payment, well and truly to be made, we bind ourselves,
58 and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the first day of July, A. D. one thousand eight hundred and seventy-five.

Whereas the above-named plaintiffs have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States in and for the western district of Pennsylvania:

Now, therefore, the condition of the obligation is such, that if the above-named plaintiffs shall prosecute their said writ of error to effect, and answer all costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

P. HERDIC. [SEAL.]
H. B. SMITH. [SEAL.]

Sealed and delivered in presence of—

(Endorsed:) King et al. vs. Ario Pardee et al. No. 14. June term, 1871. Bond approved July 7, 1875. W. Strong, j's. Filed July 7, 1875.

59 PLAINTIFFS IN ERROR AND PLAINTIFFS below
vs.
ARIO PARDEE ET AL., DEFENDANTS IN error and defendants below.

Issue writ of error to the circuit court of the United States in and for the western district of Pennsylvania, returnable to the second Monday of October, A. D. 1875.

J. W. MAYNARD AND
J. O. PARKER,
Attorneys for Plaintiffs in Error.

To the clerk of the Supreme Court of the United States.

JULY 9, 1875.

(Endorsed:) W'm M. King et al. vs. Ario Pardee et al. No. 14. June term, 1871. Præcipe for writ of error. Filed July 9th, 1875.

60 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the western district of Pennsylvania, at Williamsport, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you tried, between William M. King, Elizabeth B. King, Margaret Carter, William Drysdale, Walter S. Drysdale, James M. Drysdale, Thomas M. Drysdale, Sophia Furness, heirs at law of James Turnbull, deceased, plaintiffs in error and plaintiffs below, and Ario Pardee, Edward Roberts, Anthony C. Roberts, Algernon S. Roberts, Percival Roberts, and George T. Roberts, executors of Algernon S. Roberts, deceased, Edward Roberts, j'r, Howard Roberts, and Edward Browning, executors and trustees of Edward Roberts, deceased, defendants in error and defendants below, a manifest error hath happened, to the great damage of the said William M. King, Elizabeth B. King, Margaret Carter, William Drysdale, Walter S. Drysdale, James M. Drysdale, Walter S. Drysdale, Thomas M. Drysdale, Sophia Furness, heirs at law of James Turnbull,
61 deceased, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said

Supreme Court, this ninth day of July, in the year of our Lord one thousand eight hundred and seventy-five.

[L. S.] HEPBURN McCLURE,
Clerk of the Circuit Court of the United States,
at Williamsport, Penn'a.

62 U. S. circuit court, western district of Penn'a.

WILLIAM M. KING, ELIZABETH B. KING, Margaret Carter, William Drysdale, Walter S. Drysdale, James M. Drysdale, Thomas M. Drysdale, Sophia Furness, heirs at law of James Turnbull, deceased, *vs.* ARIO PARDEE, EDWARD ROBERTS, ANTHONY C. Roberts, Algernon S. Roberts, Percival Roberts, and George T. Roberts, executors of Algernon S. Roberts, deceased, Edward Roberts, j'r, Howard Roberts, and Edward Browning, executors and trustees of Edward Roberts, deceased.	No. 14. June term, 1871.

UNITED STATES OF AMERICA, *ss:*

To Ario Pardee, Edward Roberts, Anthony C. Roberts, Algernon S. Roberts, Percival Roberts, and George T. Roberts, executor of Algernon S. Roberts, Edward Roberts, j'r, Howard Roberts, and Edward Browning, executors and trustees of Edward Roberts, deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the 2nd Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the western district of Pennsylvania, wherein W'm M. King and others, as above named, are plaintiffs, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned
63 should not be corrected, and speedy justice should be done to the parties in that behalf.

Witness the honorable W. Strong, justice of the said Supreme Court of the United States, the seventh day of July, in the year of our Lord one thousand eight hundred and seventy-five.

W. STRONG, *J.*

We hereby accept service of this notice for the defendants.
ARMSTRONG & LINN,
Att'ys for Def'ts.

JULY 9, 1875.

(Endorsed:) W'm M. King et al. vs. Ario Pardee et al. Citation. Filed July 9, 1875.

64 UNITED STATES OF AMERICA,
Western District of Pennsylvania, ss:

I, Hepburn McClure, clerk of the circuit court of the United States for the western district of Pennsylvania, at Williamsport, do hereby

certify that the foregoing is a true and correct copy of the whole record and proceedings in the foregoing case, wherein James Turnbull, j'r, a subject of the republic of Mexico, is plaintiff, and Ario Pardee et al., citizens of the State of Pennsylvania, are defendants, as full and entire as the same remains on file and of record in said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Williamsport, this fourth day of October, A. D. 1875.

[SEAL.] HEPBURN McCLURE, *Clerk.*

64½ (Indorsed:) C. C. U. S. No. 14. June term, 1871. James Turnbull, j'r, a subject of the republic of Mexico, vs. Ario Pardee et al., citizens of the State of Pennsylvania. Copy of record.

65 Circuit court of the U. S., western dist. of Penn'a.

WILLIAM KING ET AL. *vs.* ARIO PARDEE ET AL. } No. .

On the trial of the above-entitled cause, at the June term of the said court, in the year 1874, sitting at Williamsport, in said district, testimony was offered and evidence submitted to the court and jury there empanelled to try said cause, and proceedings had, as follows:

66 The plaintiffs offer in evidence and read:

1st. *Warrant and survey to Mary Kunkel.*

"THE COMMONWEALTH OF PENNSYLVANIA, *ss:*

"Whereas Mary Kunkel, of the county of , hath requested to take up four hundred acres of land adjoining land this day granted to John Kunkel, in the county of Northampton, (provided the same is not within the last purchase made of the Indians,) for which he agrees to pay immediately into the office of the receiver-general, for the use of this State, at the rate of ten pounds per hundred acres, in gold, silver, paper money of this State, or certificates, agreeable to an act of assembly passed the first day of April, 1784, interest to commence from the date hereof:

[Coat of arms of Pennsylvania. Tho. Mifflin.]

"These are, therefore, to authorize and require you to survey, or cause to be surveyed, unto the said Mary Kunkle, at the place aforesaid, according to the method of townships appointed, the said quantity of acres, if not already surveyed or appropriated, and to make return thereof into the secretary's office, in order for confirmation, for which this shall be your warrant.

"In witness whereof, his excellency Thomas Mifflin, esqr., president of the supreme executive council, hath hereunto set his hand and
67 caused the less seal of the said commonwealth to be affixed, the fifth day of February, A. D. 1789.

"To JOHN LUKENS, Esq.,

"*Surveyor-General.*"

In testimony that the above is a copy of the original remaining on file in the surveyor-general's office, I have hereunto set my hand, and seal of said office, at Harrisburg, the 23rd day of May, 1872.

SURVEYOR-GENERAL'S OFFICE. SEAL. PENNSYLVANIA.

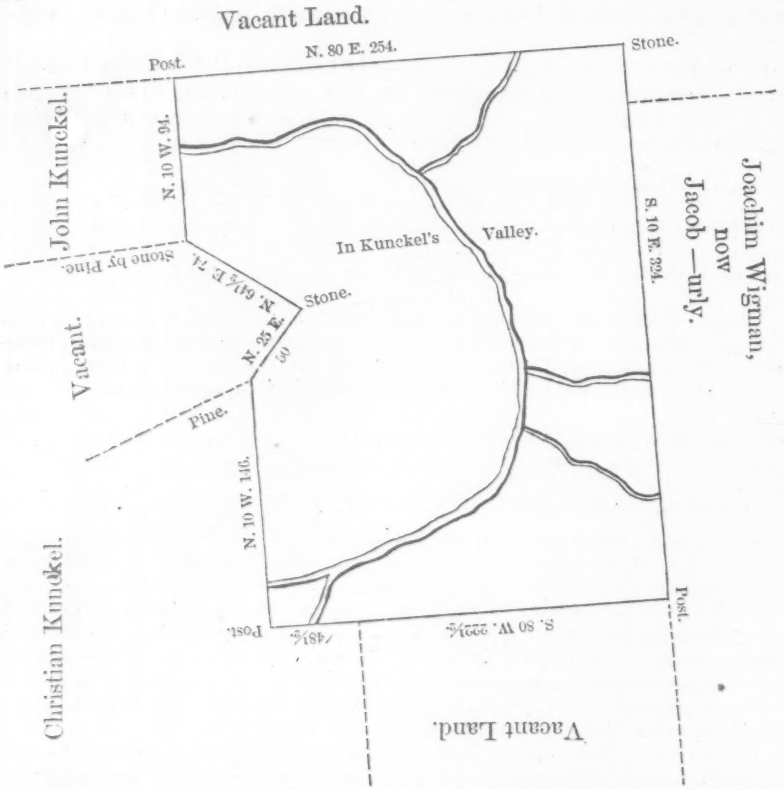
ROBT B. BEATH,
Surveyor-General.

(Endorsed on back:) 1789, Feb'y 5th. Northampton. 400 a's. Rec'd, &c., 12 Aug't, 1791. Mary Kunkel. Fee, 50c., p'd. No. 229.

The division line between Eyerly & Kunckel run agreeable to an agreement between them.

G. PALMER.

68



By virtue of a warrant dated the 5th February, 1789, surveyed the 19th July, 1791, to Mary Kunckel, the above-described tract of land, situate on a branch of Black Creek, in Northampton or Northumberland County, containing four hundred and thirty-nine acres fifty perches and the allowance of six p. cent., &c., a

DANIEL BRODHEAD, Esq., *Surv'y'r-General.* { Called Pleasant Meadow. } P'r GEO. PALMER.

In testimony that the above is a copy of the original remaining on file in the office of the surveyor-general of Pennsylvania, I have hereunto set my hand and affixed the seal of said office, at Harrisburg, this 23rd day of May, 1872.

[SEAL.]

ROB'T BEATH,
Surveyor-General.

(Indorsed:) Northampton. Mary Kunckel. 439ᵃ 50. Ret'd, &c., 12 Aug't, 1791. Fee, 50c., p'd.

69 Also,

3. *Patent for Mary Kunkel tract.*

LAND DEPARTMENT,
Commonwealth of Pennsylvania:

To all to whom these presents shall come, greeting:

Know ye that, in consideration of the monies paid by Mary Kunkle into the receiver-general's office of this commonwealth, at the granting of the warrant hereinafter mentioned, and of the sum of four pound ten shillings, lawful money, now paid by her into the said office, there is granted by the said commonwealth unto the said Mary Kunkle a certain tract of land, called "Pleasant Meadow," situate on a branch of Black Creek, in the county of Northampton or Northumberland, beginning at a post; thence by vacant land north eighty degrees east two hundred and fifty-four perches to a stone; thence by the same and land now of Jacob Eyerly south ten degrees east three hundred and twenty-four perches to a post; thence by vacant land and land of Christian Kunkle south eight degrees west two hundred and twenty-two perches and one-half to a post; thence by said Kunkle's land north ten degrees west one hundred and forty-six perches to a pine; thence by vacant
70 land north twenty-five degrees east fifty perches to a stone, north sixty-four degrees and one-half west seventy-four perches to a stone by a pine; and thence by land of John Kunkle north ten degrees west ninety-four perches to the beginning, containing four hundred and thirty-nine acres and fifty perches and allowance of six per cent. for roads, &c., with the appurtenances.

Which said tract was surveyed in pursuance of a warrant dated the fifth day of February, 1789, granted to the said Mary Kunkle:

To have and to hold the said tract or parcel of land, with the appurtenances, unto the said Mary Kunkle, her heirs and assigns, forever, free and clear of all restrictions and reservations as to mines, royalties, quitrents, or otherwise, excepting and reserving only the fifth part of all gold and silver ore for the use of the commonwealth, to be delivered at the pit's mouth, clear of all charges.

In witness whereof Thomas Mifflin, governor of the said commonwealth, hath hereto set his hand and caused the State seal to be hereunto affixed the thirteenth day of August, in the year of our Lord one thousand seven hundred and ninety-one, and of the commonwealth the sixteenth.

Inrolled the 13th day of August, 1791.

71 THOMAS MIFFLIN. [SEAL.]

Attest:
A. J. DALLAS, *Secretary.*

I do hereby certify that the within is a true copy of a patent as recorded in patent-book P, No. 18, page 194, now remaining in the office of the surveyor-general of Pennsylvania.

In testimony whereof I have hereto set my hand and affixed the seal of said office, at Harrisburg, the 16th day of February, A. D. 1871.

{ SURVEYOR-GENERAL'S OFFICE SEAL. PENNSYLVANIA. }

ROB'T A. McCOY,
For J. M. CAMPBELL, *S. G.*

Also—

4. Connected draft of nine tracts of land, including the Mary Kunkle tract; certificate dated Feb'y 17th, 1871.

72 Also—

5th. Treasurer of Luzerne Co. to Jacob Cist.

To all persons to whom these presents shall come:

I, George M. Hollenback, treasurer of the county of Luzerne, in the commonwealth of Pennsylvania, send greeting:

Whereas a tract of unseated land, containing four hundred and thirty-nine acres, situate in the township of Sugar Loaf, county of Luzerne, surveyed to Mary Kunckle, hath been rated and assessed with divers taxes, to wit, county taxes, four dollars and thirty-nine cents, and road taxes which remained due and unpaid for the space of one year before the second Monday of June, one thousand eight hundred and twenty; and whereas I, the said treasurer, in pursuance of the acts of assembly of the commonwealth of Pennsylvania in such case made and provided, after having given due public and timely notice of the time and place of sale, did, on the day and year aforesaid, expose the aforesaid tract of land to sale by the acre, by public vendue and outcry, and by adjournment from day to day, on the first day of July, eighteen hundred and twenty, sold the whole thereof to Jacob Cist, he being the highest and best bidder, and that the best price bidden for the same making in the whole the sum of seven dollars one and
73 a half cents bidden, being a sum sufficient to pay the aforesaid taxes and all costs necessarily accrued:

Now know ye that I, the said treasurer, for and in consideration of the aforesaid sum of seven dollars and one & a half cents, lawful money of the United States, to me in hand paid by the said Jacob Cist, which before the ensealing of these presents is hereby acknowledged to be received, have granted, bargained, and sold, and by these presents do, by force of the acts of assembly in such case made and provided, grant, bargain, and sell unto the said Jacob Cist, his heirs and assigns, the aforesaid four hundred and thirty-nine acres of unseated land:

Together with all and singular the rights, members, immunities, privileges, and appurtenances thereunto belonging; as also all the estate of whatsoever nature the aforesaid Mary Kunckle, or any other person in and through the name of the said Mary Kunckle, in the premises had or could have:

To have and to hold the aforesaid premises or parcel of unseated land hereby granted or mentioned, or intended so to be, with the appurtenances, unto the said Jacob Cist, his heirs and assigns, to his and their only proper use and behoof forever, for such estate, and on the same conditions as the said Mary Kunckle, or any other person in virtue of the order, application, or warrant in the name of the said Mary Kunckle, had and held the same at and immediately before the sale
74 thereof herein mentioned, or at the time the aforesaid taxes were levied, according to the form and effect of the laws of this commonwealth in such case made and provided.

In witness whereof I, the said treasurer, have hereunto set my hand and seal, at Wilkesbarre, the tenth day of November, in the year of our Lord one thousand eight hundred and twenty.

G. M. HOLLENBACK, [SEAL.]
Treasurer.

Sealed and delivered in the presence of us, the word "second" interlined.

ZIBA BENNETT.
ZURAH SMITH.

LUZERNE COUNTY, *ss:*

At an adjourned court of common pleas, held at Wilkesbarre in and for said county, on the twenty-fifth day of November, anno Domini one thousand eight hundred and twenty, personally came G. M. Hollenback, treasurer of the said county, and in open court, in due form of law, executed and acknowledged the foregoing instrument of writing as his act and deed, for the purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Wilkesbarre, the day and year last aforesaid.

[SEAL.] ANDREW BEAUMONT, *Prot.*

Recorded Nov. 23d, 1846.

75 STATE OF PENNSYLVANIA,
County of Luzerne, ss:

I, Tho's Hutchins, recorder of deeds, &c., in and for said county, do hereby certify that the above and foregoing is a true and correct copy of a deed or conveyance from the treasurer of Luzerne County to Jacob Cist, as the same stands of record in my said office in deed-book No. 43, page 356.

Witness my hand and seal of office, at the city of Wilkesbarre, this twenty-first day of May, A. D. 1872.

[SEAL.] THOMAS HUTCHINS, *Recorder*,
Per J. P. POLLOCK.

Also—

6th. Jacob Cist to Jos. Mussi.

In consideration of the sum of one dollar to me in hand paid by Joseph Mussi, the receipt whereof is hereby acknowledged, I do hereby transfer to him, his heirs and assigns, all the right, title, and interest I may have by virtue of the within deed.

JACOB CIST.

COUNTY OF LUZERNE, *ss:*

Personally appeared, the 29th day of October, 1823, before me, Jesse Fell, esq., one of the associate judges of the court of common
76 pleas for said county, Jacob Cist, who acknowledged the above instrument of writing to be his act and deed.

Witness my hand and seal.

[SEAL.] JESSE FELL.

Recorded Nov. 23rd, 1846.

STATE OF PENNSYLVANIA,
County of Luzerne, ss:

I, Tho's Hutchins, recorder of deeds, &c., in & for said county, do hereby certify that the above and foregoing is a true and correct copy of a deed of assignment from Jacob Cist to Jos. Mussi, as the same stands of record in my said office in deed-book No. 43, page 357.

Witness my hand and seal of office at the city of Wilkesbarre, this 21st day of May, A. D. 1872.

[SEAL.] THO'S HUTCHINS, *Recorder*,
Per POLLOCK.

Also—

7th. Joseph Mussi to Alexander Turnbull.

Know all men by these presents that I, Joseph Mussi, of the city Philadelphia, merc't, in consideration of the sum of one dollar, to him in hand paid by Alexander Turnbull, of the said city, gent., the
77 receipt whereof is hereby acknowledged, hath granted, bargained and sold, assigned and transferred unto the said Alexander Turnbull, his heirs and assigns, all the right, title, and interest he may or could have in the within deed poll of George M. Hollenback, treasurer of Luzerne County, dated the 10th day of November, 1820, to Jacob Cist, of Wilkesbarre, in said county, who, by deed indorsed on the same, sold and transferred, on the 29th day of Oct'r, 1823, unto the said Joseph Mussi, his heirs and assigns, all his right, title, and interest in the within deed.

To have and to hold all and singular the premises hereby granted and assigned, or intended so to be, unto the said Alexander Turnbull, his heirs and assigns, forever.

In witness whereof the said Joseph Mussi hath hereunto set his hand and seal this twenty-eighth day of May, anno Domini one thousand eight hundred and twenty-four.

JOS. MUSSI. [SEAL.]

Sealed and delivered in presence of us—
(Fac-simile) J. PADSSE.
JOHN D. TAYLOR.

This 28th day of May, 1824, before me, the subscriber, one of the aldermen of the city of Philadelphia, came the above-named Joseph Mussi and acknowledged the above instrument to be his act and
78 deed, and desired the same to be recorded.

J. B RDSSR, (fac-simile.) [SEAL.]
Aldm.

Recorded November 23rd, 1846.

STATE OF PENNSYLVANIA,
County of Luzerne, ss:

I, Tho's Hutchins, recorder of deeds, &c., in & for said county, do hereby certify that the above and foregoing is a true and correct copy of a deed of assignment from Joseph Mussi to Alexander Turnbull, as the same stands of record in my said office in deed-book No. 43, page 357.

Witness my hand & official seal, at the city of Wilkesbarre, this 21st day of May, A. D. 1872.

THO'S HUTCHINS, *Recorder*,
P'r J. P. POLLOCK, *Dep. Rec.*

78½ (Indorsed:) Certified copy of a deed, treas. of Luz. Co. to Jacob Cist, assigned by Jacob Cist to Joseph Mussi, and assigned by Joseph Mussi to Alexander Turnbull. Fees paid, $5.00; paid by O. H. Wheeler.

79 Also—

8th. Depositions of Elizabeth B. King and others, (supra.)

Also—

9th. Certified copy of letters of administration on estate of Alexander Turnbull to William Drysdale, dated August 1st, 1826.

Inventory and appraisement made July 31st, 1826 ..... $197.95

Jan'y 17, 1839, final acc't filed.

80 Also—

10. Exemplification of the record of a judgment entered in the common pleas of Luzerne County, to No. 46, April term, 1827, as follows:

THE COMMONWEALTH OF PENNSYLVANIA,
Luzerne County, ss:

Pleas before the honorable David Scott, esquire, president, and Matthias Hollenback and Jesse Fell, esquires, his associates, judges of the court of common pleas, held at Wilkesbarre, in and for the county of Luzerne, on the first Monday of April, 1827.

COURT OF COMMON PLEAS. [SEAL.] LUZERNE COUNTY.

Among the records of said court it is, inter alia, thus contained:

Continuance.—Docket-entry.

Conyngh.

WILLIAM DRYSDALE, ADM'R OF ALEX'R TURNBULL, dec'd, *vs.* JAMES TURNBULL & ALEX'R TURNBULL, J'R. } 46.

Penalty		8,000 00
R. debt		4,980 00
Pro't p'd	50	
Att'y	3 00	
		3 50
Fi. fa. to Ap. 1827–57		50
In't from 15 Feb., 1827		
T. vend. exp's Aug. 1827–30		75

D. S. B. Feb'y 22, 1827, J. N. Conyngham app'r'd for def'ts and confess'd judg't to pl'ff for the sum of eight thousand dollars, with costs of suit, release of all errors, and stay of ex'n until the 1st day of Feb., 1827.

Rec'd my fees of sh'ff H. C. D. S.

81 *Copy of bond, &c.*

Know all men by these presents that we, James Turnbull and Alexander Turnbull the younger, of the city of Philadelphia, grocers, are held and firmly bound unto Alexander Turnbull of the same city, cabinet-maker, in the sum of eight thousand dollars, lawful money of the United States, to be paid to the said Alexander Turnbull, his certain attorney, executors, administrators, or assigns; to which payment, well

and truly to be made, we do bind ourselves and each of us, our and each of our heirs, executors, and administrators, and every of them, firmly by these presents, sealed with our seals, dated the fifteenth day of January, in the year of our Lord one thousand eight hundred and twenty-three.

The condition of this obligation is such, that if the above-bounden James Turnbull and Alexander Turnbull, or either of them, their or either of their heirs, executors, or administrators, or any of them, shall and do well and truly pay, or cause to be paid, unto the above-named Alexander Turnbull, his certain attorney, executors, administrators, or assigns, the just sum of four thousand dollars, lawful money of the United States, on or before the expiration of ten days next ensuing the date of these presents, with lawful interest thereon, without any fraud or further delay, then the above obligation to be void; or else to be and remain in full force and virtue.

JAMES TURNBULL. [PAPER SEAL.]
ALEX'R TURNBULL, J'R. [PAPER SEAL.]

Sealed and delivered in the presence of us—
ELEAZER L. COHEN.
HUGH RICHMOND.

82 To James Gibson, esq., attorney of the court of common pleas, at Philadelphia, in the State of Pennsylvania, or to any other attorney of the said court or of any court elsewhere:

Whereas we, James Turnbull and Alexander Turnbull, the younger, of the city of Philadelphia, grocers, in and by a certain obligation, bearing even date herewith do stand bound hereunto Alexander Turnbull, of the city of Philadelphia, cabinet-maker, in the sum of eight thousand dollars, lawful money of the United States, conditioned for the payment of four thousand dollars like lawful money, with interest for the same. These are to desire and authorize you, or any of you, to appear for us, or either of us, in the said court or elsewhere, in an action of debt there or elsewhere brought, or to be brought, against us or either of us, at the suit of the said Alexander Turnbull, his executors, administrators, or assigns, on the said obligation, as of the last, next, or any other subsequent term, there or elsewhere to be held, and confess judgment thereupon against us, or either of us, for the sum of eight thousand dollars debt, besides cost of suit, by cognovit, actionem, or otherwise, as to you shall seem meet. And for you or any of you so doing this shall be your sufficient warrant. And we do hereby, for ourselves, and each of us, one and each of our heirs, executors, & administrators, remise, release, and forever quit-claim unto the said Alexander Turnbull, his executors, administrators, and assigns, all and all manner of error and errors,
83 misprisons, misentries, defects, and imperfections whatever in the entering the said judgment, or any process or proceedings thereon or thereto, or anywise touching or concerning the same.

In witness whereof we have hereunto set our hands and seals the fifteenth day of January, in the year of our Lord one thousand eight hundred and twenty-three.

JAMES TURNBULL, [PAPER SEAL.]
ALEX. TURNBULL, J'R [PAPER SEAL.]

Sealed and delivered in the presence of us, the words "the younger" being first interlined—

ELEAZER L. COHEN.
HUGH RICHMOND.

Filed Feb'y 22, 1827.

Copy of narr.

LUZERNE COUNTY, *ss:*

Common pleas of the term of April, in the year one thousand eight hundred & twenty-seven.

James Turnbull and Alexander Turnbull, junior, late of said county, yeomen, were summoned to answer William Drysdale, administrator of Alexander Turnbull, deceased, in a plea that they render to him the sum of eight thousand dollars, lawful silver money of the United States, which to him, as adm'r, they owe, and from him unjustly detain, whereupon the said W'm Drysdale, as administrator aforesaid, complain' that whereas the said James and Alexander, junior, on the fifteenth day of January, in the year one thousand eight hundred and twenty-
84 three, at the county aforesaid, by their certain writing obligatory, sealed with their seal and to the court here now shown, whose date is the day and year aforesaid, acknowledged themselves to be held and firmly bound to the said Alexander Turnbull, now deceased, in his life-time, in the said sum of eight thousand dollars, money aforesaid, to be paid to the said Alexander Turnbull, now deceased, whenever they should thereunto afterwards be requested. Nevertheless the said James and Alexander, junior, although often requested to pay the said sum to the said Alexander, deceased, in his life-time, and to the said William, to whose administration of his goods and chattels, rights and credits, have been granted since his decease, have not paid the same or any part thereof to the said Alexander in his life-time nor to the said William, his administrator, since his decease, but the same to pay hath hitherto altogether refused, and still doth refuse, to the damage of him, the said William, as administrator, as he says, the sum of one thousand dollars, and therefore he brings this suit.

W'M DRYSDALE,
Adm'r Alex. Turnbull, dec'd.

Pledges of prosecution:
JOHN DOE.
RICHARD ROE.

By virtue of a power of attorney, I hereby appear for the above-named James and Alexander Turnbull, junior, and confess judgment, as of April term in the year one thousand eight hundred
85 and twenty-seven, to the said William Drysdale, admin'r of Alexander Turnbull, deceased, for the sum of eight thousand dollars, with costs of suit, release of all errors, and stay of execution until the first day of February, in the year one thousand eight hundred and twenty-seven.

JOHN CONYNGHAM.

FEBRUARY 20th, 1827.

Penal sum, $8,000.00; real debt, $4,980.00; int. fr. Feb'y 15, 1827.

(Indorsed:) No. 46. April T., 1827. William Drysdale, adm'r of Alexander Turnbull, dec'd, vs. James Turnbull and Alexander Turnbull,

junior. Filed Feb'y 22, 1827. Narr. Debt & conf'n of judgment. Penal sum, $8,000. Real debt, $4,980. Int. fr. Feb'y 15, 1827. Conyngham for pl'ff.

86 STATE OF PENNSYLVANIA,
Luze'ne County, ss:

I, Peter Seibel, prothonotary of the court of common pleas in and for the said county, do certify that the foregoing is a true and perfect copy of the whole record of the case therein stated so full and entire as the case now remains of record and on file in said court, and I do further certify that I have made diligent search among the files of my said office for the fi. fa. and vend. ex. issued in said case, and that the same are not to be found in my said office.

Witness my hand and the seal of said court at Wilkesbarre, this twenty-first day of May, A. D. 1872.

{ COURT OF COMMON PLEAS, } PETER SIEBEL,
{ LUZERNE COUNTY. SEAL. } *Prothonotary.*

COMMONWEALTH OF PENNSYLVANIA,
Luzerne County, ss:

I, Garrick M. Harding, president judge of the eleventh judicial district of Pennsylvania, and presiding judge of the court of common pleas in and for the county of Luzerne, do certify that Peter Seibel, by whom the annexed record, certificate, and attestation were made and given, and who, in his own proper handwriting, has thereunto subscribed
87 his name and affixed his official seal, was at the time of so doing, and now is, prothonotary of the court of common pleas in and for the county of Luzerne, duly commissioned and qualified, to all whose acts as such full faith and credit are and ought to be given as well in courts of judicature as elsewhere, and that the said record, certificate, and attestation are in due form of law, and made by the proper officer.

In testimony whereof I have hereunto set my hand this 21st day of May, A. D. 1872.

GARRICK M. HARDING,
President Judge.

COMMONWEALTH OF PENNSYLVANIA,
Luzerne County, ss:

Peter Seibel, prothonotary of the court of common pleas in and for the county of Luzerne, do certify that the honorable Garrick M. Harding, by whom the foregoing attestation was made, and who has thereunto subscribed his name, was at the time of making thereof, and still is, president judge of the court of common pleas in and for the county of Luzerne, duly commissioned and qualified; to all whose acts as such full faith and credit are and ought to be given as well in courts of judicature as elsewhere.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court this twenty-first day of May, A. D. one thousand eight hundred and seventy-two.

[SEAL.] PETER SEIBEL,
Prothonotary.

88 Also,

11th. Copies of fi. fa. and venditioni exponas on above judgment. (See agreement of parties below.)

Fi. fa. issued Jan'y 4, 1827. Debt, $4,980; costs, 19.11.

Vend. exp. issued April 6th, 1827, to No. 50, Aug't t., 1827.

" " recites a levy by virtue of fi. fa. (inter alia) on Mary Kunkle tract.

Sheriff's return on vend. exp. is as follows:

"To the hon. judges within named:

"I hereby certify, that by virtue of this writ to me directed, I did, after giving due, public, and timely notice of the time and place of sale, *I did* expose the lands and tenements within described to sale on the fourth day of August, 1827, and, by adjourning from time to time, finally I did, on the 14th day of August instant, by public outcry, *and sold* the same-described tracts of land within described to John N. Conyngham, attorney for the plaintiff, for twenty-five dollars for each tract mentioned, he being the highest and best bidder for the same, which money I have before the judges to render to the said plaintiff, after deducting the costs. August 14, 1827.

"So answers—

"N. HURLBUT, *Sh'ff.*"

89 (Endorsed on vend. exp.:)

"Rec'd of Napthala Hurlbut two hundred and eight dollars and thirty-nine cents, the balance after deducting costs.

"Feb'y 6, 1828.

"JNO. N. CONYNGHAM,
"*Pl'ff's Att'y.*"

"Rec'd of Jno. N. Conyngham forty-one dollars and sixty-one cents, Feb'y 26, 1828, deducting att'y fee, $3.

"N. HURLBUT, *Sh'ff.*

J. N. C.

90 Also,

12th. Naphtali Hurlbut, sheriff, to John N. Conyngham.

To all persons to whom there presents shall come:

Naphtali Hurlbut, sheriff of the county of Luzerne, in the commonwealth of Pennsylvania, send greeting.

Whereas by a writ of fieri facias, bearing test at Wilkesbarre, the fourth day of January, anno Domini eighteen hundred and twenty-seven, I was commanded that of the goods, chattels, lands, and tenements of James Turnbull and Alexander Turnbull, *in* late of said county, yeoman in my bailwick, I should cause to be levied as well a certain debt of eight thousand dollars, which William Drysdale, administrator of Alexander Turnbull, deceased, lately in our county court of common please, of Luzerne County, before the judges at Wilkesbarre, recovered against them, as three dollars & fifty cents, which in said court was adjuded for his damages which he sustained by occasion of the detention of that debt, and that I should have those monies before the judges at Wilkesbarre, at a court of common pleas there to be held for the said county, the first Monday of April, then next, to render to the said William Drysdale, administrator as aforesaid, for his debt and damages aforesaid, and that I should have then there that writ; at which day I, the said sheriff, made return to the judges that by virtue of the said writ to me directed, I had seized and taken in execution the

91 following-described tracts or parcels of land, being all situate in the township of Sugar Loaf, Luzerne County, with all the right, title, interest, and claim of the said James Turnbull and Alexander Turnbull, ju'r, of, into, or out of the same, to wit: one tract called Plainfield, containing two hundred and six acres fifty-one perches and allowance; one other tract called Eyerly's Retreat, containing *containing* two hundred six acres and fifty-one perches and allowance; one other tract called Janives, containing three hundred and five acres one hundred and five perches and allowance; one other tract called Paper Money, containing four hundred and seventeen acres sixty-three perches and allowance; one other tract called Greenfield, containing two hundred and ten acres three perches and allowance; one other tract called Springfield; being the same six tracts of land which were conveyed by Joseph Mussi to Alexander Turnbull by deed, bearing date the seventh day of August, A. D. 1822, and recorded in the office for recording of deeds, in and for the county of Luzerne, in deed-book No. 22, page 527. Also another tract in the warrantee name of Sarah Kunkle, containing four hundred thirty-nine acres; one other tract in the warrantee name of Christian Kunkle, containing four hundred and forty-one acres; one other tract in the warrantee name of James Lattermore, containing four hundred and thirty-nine acres seventy-four perches; one other
92 tract in the warrantee name of Conrad Kunkle, containing four hundred and forty-three acres; and other tract in the warrantee name of Mary Kunkle, containing four hundred and thirty-nine acres fifty perches; all situate in the township of Sugar Loaf as aforesaid, with all the appurtenances thereto belonging, which remained in my hands unsold for want of buyers, so that I could not have the monies in the said writ mentioned at the day and place therein contained, as by the said writ I was commanded; and that the residue of the execution of the said writ was contained in a certain schedule thereunto annexed, by which schedule or inquisition it appears on the oaths and affirmations of the inquest therein named that the rent, issues, and profits of the messuage, &c., were not of a clear yearly value sufficient, beyond all reprises, within the space of seven years to satisfy the debts and damages in the said writ mentioned. Wherefore by a certain other writ of venditioni exponas, issued out of the court, bearing tese at Wilkesbarre, the sixth day of April last past, I, the said sheriff, was commanded that the said messuage and above-described tracts of land with the appurtenances, so by me seized and taken in execution, I should expose to sale, and that I should have those monies before the said judges at Wilkesbarre, at the court of common pleas, there to be held the first Monday of August then next, to render to the said William Drysdale, adm'r as aforesaid, for his debt and damages aforesaid. In pursuance whereof, I, the said sheriff, having given due and timely notice of the time and
93 place of sale, did on the fourth day of August expose the premises aforesaid to sale by public vendue or outcry, and by adjournment from time to time, finally, on the fourteenth day of August last past, sold the same to John N. Conyngham for the sum of two hundred and seventy-five dollars, he being the highest and best bidder, and that the highest and best price bidden for the same. Now know ye that I, the said sheriff, for and inconsideration of the aforesaid sum of two hundred and seventy-five dollars, to me in hand paid by the said John N. Conyngham, at and before the ensealing and delivery hereof, the receipt whereof I do hereby acknowledge, have granted, bargained, and sold, and by these presents according to the directions of the said last recited writ, and by force and virtue thereof, do grant, bargain, and sell unto

the said John N. Conyngham, his heirs and assigns, all that the said messuage and above-described tracts of land:

Together with all and singular the buildings, improvements, rights, members, and appurtenances whatsoever thereunto belonging, or in any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, property, claim, and demand whatsoever of them the said James Turnbull & Alexander Turnbull, j'r, of, in, to, or out of the same:

To have and to hold the said messuage and above-described tract of land, hereditaments and premises, hereby granted or mentioned or intended so to be, with the appurtenances, unto the said John N.
94 Conyngham, his heirs and assigns, to his and their only proper use and behoof forever, for such estate and under such rents and conditions as the said James Turnbull & Alexander Turnbull, j'r, had and held the same at and im'ediately before the taking thereof in execution according to the form and effect of the laws and usages of this commonwealth in such case made and provided.

In witness whereof, I, the said sheriff, have hereunto set my hand and seal, dated at Wilkesbarre the fourteenth day of April, one thousand eight hundred and twenty-eight.

NAPHTELI HURLBUT. [SEAL.]

Sealed and delivered in presence of—"the interlining made before signing"—

HARRIS COLT.
C. D. SHOEMAKER.

LUZERNE COUNTY, *ss:*

At a court of common pleas held at Wilkesbarre, in and for the county
[SEAL.] of Luzerne, on the fourteenth day of April, A. D. one thousand eight hundred and twenty-eight, Naphtali Hurlbut, esquire, sheriff of said county, came personally into court, and in open court, in due form of law, executed and acknowledged the foregoing instrument of writing as and for his act and deed for the uses and purposes therein mentioned.

In testimony whereof I have hereto signed my name and set the seal of said court at Wilkesbarre the day and year aforesaid.

Recorded Jan. 13th, 1832.

C. D. SHOEMAKER, *Prot.*

95 Also—

13th. John N. Conyngham and wife to William Drysdale.

Know all men by these presents that we, John N. Conyngham, within named, and Ruth Ann, his wife, for and in consideration of the sum of two hundred and ninety dollars, lawful money of the United States, to us well and truly paid by William Drysdale, of the city of Philadelphia, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, released and assigned, and confirmed, and hereby do grant, bargain and sell, release, assign, and confirm unto the said William Drysdale, his heirs and assigns, all our right, title, and interest, whether in law or in equity, or otherwise, of, in, and to the within-described several tracts of land, and each of them, to have and to hold the same to him, the said William Drysdale, his heirs and assigns, free, clear, and discharged from any claim, right, or demand of us, or either of us, forever.

In witness whereof we have hereunto set our hands and seals this tenth day of July, in the year of our Lord one thousand eight hundred and twenty-eight.

JOHN N. CONYNGHAM. [SEAL.]
RUTH ANN CONYNGHAM. [SEAL.]

Sealed and delivered in presence of—
THO'S DYER.
BENJ'N PARKE.

COUNTY OF LUZERNE:

This sixteenth day of July, in the year of our Lord one thou-
96 sand eight hundred and twenty-eight, before me, the subscriber, one of the justices of the peace in and for said county, personally came the above-named John N. Conyngham and Ruth Ann, his wife, and severally acknowledged the above deed-poll to be their act and deed, she (the said Ruth Ann) being of full age, and by me examined separate and apart from her said husband, and the full contents thereof being by me made known to her, acknowledged the same to have been executed freely and w*h*ait'ngly, and without any coercion or compulsion of her said husband, being done by her own free will and accord. Witness my hand and seal.

Recorded Jan'y 13th, 1832.

THOMAS DYER, [SEAL.]
Jus. Peace.

STATE OF PENNSYLVANIA,
County of Luzerne, ss:

I, Thomas Hutchins, recorder of deeds, &c., in and for said county,
[SEAL.] do hereby certify that the above and foregoing is a true and correct copy of a deed from N. Hurlbut, sh'ff, to John N. Conyngham, and assignment from John N. Conyngham and w. to W'm Drysdale, as the same stands of record in my said office in deed-book
96¼ No. 28, page 287, &c.

Witness my hand and seal of office at the city of Wilkesbarre this 21st day of May, A. D. 1872.

THOMAS HUTCHINS, *Recorder*,
Per G. H. SHIRER.

96½ (Indorsed:) Nos. 12–13. Certified copy of a deed from N. Hurlbut, sheriff, to John N. Conyingham. Assignment from John N. Conyngham & w. to William Drysdale. Fees paid, $3.50. Paid by O. H. Wheeler.

97 *Testimony of James Turnbull, j'r.*

James Turnbull, j'r, the plaintiff, called on behalf of plaintiff, having first been duly sworn according to law, testifies:

My name is James Turnbull, j'r. My father's name was Alexander Turnbull, j'r. My mother's name was Mary B. Huber. I had uncles and aunts; two aunts, Margaret and Jane, and an uncle James. My grandfather's name was Alexander Turnbull. I am in my fifty-second year. My father is dead; died in 1835. I was in my 13th year at the time of his death. I have always understood that he died in a hospital in Philadelphia, in 1835. I was at Doyelstown at school at that time, My mother died Nov. 24, 1871. My home is in Mexico, in Mazatlan

just at the mouth of California. I left the United States April 1st, 1843. I went to the island of S't Thomas, West India Islands.

Question. State when you first knew of any interest in this land?

Answer. Some time in the year 1869 I was informed by letter of
98 my interest in the lands. I received the letter from my mother, and she had received the information from some one else. I then wrote a letter to M'r Wheeler, and it was some time before I heard from him. And I then ordered a suit to be brought to ascertain my interest. That is why I came here to attend to it. I left Mexico in April and arrived in June, expecting that the suit would be tried at that term. I have never consented to the sale of my interest in this tract, not having known anything about it. I think it was in the latter part of 1870 that I learned there was some one in possession, claiming the land against me.

99 And the defendants herein offered and read in evidence (inter alia) the following:

WILLIAM DRYSDALE & WIFE, & MARGARET Turnbull,
vs.
ALGERON S. ROBERTS & EDWARD ROBERTS.

This indenture, made the twenty-first day of October, in the year of our Lord one thousand eight hundred and forty-six, (1846,) between William Drysdale, of the city of Philadelphia, in the State of Pennsylvania, watchmaker and jeweller, and Jane, his wife, and Margaret Turnbull, also of the said city, single woman, all of the one part, and Algernon S. Roberts and Edward Roberts, also of the said city, late druggists, of the other part, witnesseth: That the said William Drysdale, and Jane, his wife, and Margaret Turnbull, for and in consideration of the sum of forty-four thousand five hundred dollars, lawful money of the United States of America, unto them in hand well and truly paid by the said Algernon S. Roberts and Edward Roberts at the time of the execution hereof, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, enfeoffed, released, conveyed, and confirmed, and, by these presents, do grant, bargain, sell, assign, enfeoff, release, convey, and confirm unto the said Algernon S. Roberts and Edward Roberts, their heirs and assigns, in equal moities as tenants in common, all that certain tract, piece, or parcel of land surveyed in pursuance of a warrant dated the fifth day of February, A. D. one thousand seven hundred and eighty-nine, granted to Mary Kunc-
100 kle, which tract is called Pleasant Meadow, and is situate on Cranberry Creek, being a branch of Black Creek, in formerly Sugar Loaf, now Hazle Township, formerly Northampton or Northumberland County, now Luzerne County, in the State of Pennsylvania aforesaid, described according to said original survey as follows: Beginning at a post, thence by vacant land north eighty degrees east, two hundred and fifty-four perches to a stone; thence by the same and land now of Jacob Eyerly south ten degrees east, three hundred and twenty-four perches to a post; thence by vacant land and land of Christian Kunckle south eighty degrees west, two hundred and twenty-two perches and one-half to a post; thence by said Kunckle land north ten degrees west, one hundred and forty-six perches to a pine; thence by vacant land north twenty-five degrees east, fifty perches to a stone, north sixty-four degrees and a half west, seventy-four perches to a stone by a

pine, and thence by land of John Kunckle north ten degrees west, ninety-four perches to the beginning, containing four hundred and thirty-nine acres and fifty perches, and allowance of six per cent. for roads, &c. Also all that certain tract, piece, or parcel of land surveyed in pursuance of a warrant dated the thirtieth day of May, A. D. 1792, granted to Sarah Kun'kle. * * * * *

The tract of land first above described was conveyed to Mary Kun'kle, her heirs and assigns, by patent dated the thirteenth day of August, A. D. 1791, inrolled in the rolls office in patent-book No. 18, page .

101 And the tract of same second above described was conveyed to Sarah Kunckle, her heirs and assigns, by patent dated the twelfth day of September, A. D. 1796, recorded in patent-book No. 29, page 334, &c. And both said tracts were sold for taxes on the tenth day of July, 1820, to Jacob Cist, by G. M. Hollenback, treasurer of Luzerne County, and in and by two certain deeds-poll under the hand and seal of said treasurer, bearing date respectively the tenth day of November, A. D. 1820, and intended to be forthwith recorded with the next recited deed-poll thereon endorsed. The said tracts were conveyed to the said Jacob Cist, his heirs and assigns, and the time for the redemption of said tracts allowed by law having expired, the said Jacob Cist, by his deed poll, endorsed on said treasurer's deed-poll, acknowledged the twenty-ninth day of October, A. D. 1823, did grant and convey to Joseph Mussi, his heirs and assigns; and the said Joseph Mussi, by deed-poll dated respectively the twenty-eighth day of May, A. D. 1824, granted and conveyed to Alexander Turnbull, his heirs and assigns, who being seized and possessed thereof in his demesne as of fee, departed this life intestate, on or about the tenth day of July, A. D. 1826, leaving to survive him a widow, Margaret, who is also since deceased, and issue, four children, to wit, James Turnbull, Alexander Turnbull, Jane, (who intermarried with the said William Drysdale,) and Margaret Turn-

102 bull, to and in whom the said tracts of land descended in equal parts, as tenants in common, according to the intestate law of Pennsylvania, and Napthali Hurlbut, sheriff of the said county of Luzerne, by his deed-poll bearing date the tenth day of April, A. D. 1828, did grant and convey all the right, title, interest to and claim of the said James Turnbull and Alexander Turnbull of, in, to, or out of inter alia the said two tracts of land above described, to John Conyngham, his heirs and assigns, and the said John Conyngham and wife by a deed-poll, endorsed upon the said sheriff's deed poll, bearing date the tenth day of July, in same year last aforesaid, and recorded therewith in Luzerne County, in the office for recording deeds, &c., in deed No. 28, page 287, &c., did grant and convey all the said right and interest which was of the said James Turnbull and Alexander Turnbull of and in inter alia the said two tracts of land unto the said William Drysdale, his heirs and assigns, as by reference to said deed-poll, records, and proceedings will more fully appear, together with all and singular the buildings, improvements, ways, woods, roads, passages, mines, minerals, waters, water-courses, rights, members, liberties, privileges, hereditaments, and appurtenances whatsoever unto the hereby-granted tracts of land belonging or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof.

103 And also all the estate, right, title, interest, property, claim, and demand whatsoever, which was of the said Alexander Turnbull, at and immediately before the time of his decease, and is now of them, the said William Drysdale and Jane, his wife, and Margaret Turnbull, respectively, as well at law as in equity, of, in, to, and out of the same.

To have and to hold the two tracts of land above described, hereditaments and premises, hereby granted and assigned, or mentioned as intended to be, with the appurtenances, unto the said Algernon S. Roberts and Edward Roberts, their heirs and assigns, in equal moieties, as tenants in common, to and for the only proper use and behoof of them, the said Algernon S. Roberts and Edward Roberts, their heirs and assigns, forever, in equal moieties as tenants in common, and not as joint tenants, forever. And the said William Drysdale, for himself and for the said Jane, his wife, his and her respective heirs, executors, and administrators; and the said Margaret Turnbull, for herself and for her heirs, executors, and administrators, do hereby severally, and not jointly, or one for the other or others, covenant, promise, and agree to and with the said Algernon S. Roberts and Edward Roberts, their heirs and assigns, that they, the said William Drysdale and Margaret Turnbull, and their heirs respectively, all and singular the hereditaments and premises hereby granted and assigned, or mentioned as intended
104 so to be, with the appurtenances, unto the said Algernon S. Roberts and Edward Roberts, their heirs and assigns, in equal moieties as tenants in common, against them, the said William Drysdale and Jane, his wife, and Margaret Turnbull, and their heirs respectively, and against all and every other person or persons whomsoever lawfully claiming or to claim the same, or any part or parcel thereof, by, from, or under them, or either or any of them, or under the said Alexander Turnbull, deceased, shall and will warrant and forever defend.

In witness whereof the said parties to these presents have hereunto interchangeably set their hands and seals. Dated the day and year first above written.

W'M DRYSDALE. [SEAL.]
JANE DRYSDALE. [SEAL.]
MARGARET DRYSDALE. [SEAL.]

Sealed and delivered in the presence of us—
ELISHA COWELL,
W. V. COWELL.

Received the day of the date of the above-written indenture of the above-named Algernon S. Roberts and Edward Roberts the sum of forty-four thousand five hundred dollars, being the full consideration money above mentioned.

WILLIAM DRYSDALE.
MARGARET DRYSDALE.

Witness' at signing—
ELISHA COOWELL,
W. N. COOWELL.

105 CITY OF PHILADELPHIA, STATE OF PENNSYLVANIA, *ss:*

Be it remembered that on this twenty-first day of October, A. D. 1846, before me, the subscriber, one of the alderman in and for the city of Philadelphia aforesaid, personally came and appeared the above-named William Drysdale and Jane, his wife, and Margaret Turnbull, and severally acknowledged the above-written indenture to be their and each of their act and deed for the uses and purposes therein mentioned, and respectively desired the same may be recorded as such according to law. The said Jane being of full age, and by me privately examined, separate and apart from her husband, the said William Drysdale, deceased, she executed the said indenture voluntarily and of her own free will and accord, without any compulsion or coercion of her said husband,

or any undue influence whatever, and the full contents thereof being by me first made known to her.

Witness my hand and seal.

ELISH' COOWELL, *Ald.* [SEAL.]

Recorded November 23rd, 1846.

106 *Extracts from assessment-books of Hazle Township, Luzerne County, showing taxes assessed on seated lands, &c., and lists of unseated lands in Hazle Township.*

1846 assessments:

List of unseated lands, 439, Mary Kunkle. Not on unseated list.

1847 assessments:

439, Kunkle, Mary, val. 878, list of unseated lands. No assessment of seated lands to A. S. & E. Roberts.

1848 assessments:

439, as. Kunkle. Mary, v. 878, list unseated lands.

Roberts, A. S. & E., 25 as. improv'd land, val	$2,000
375 " unimp'd do., do	7,500
1 saw-mill .... } coal-cracker. }	900
8 houses	3,200
Total value	$13,600
State "	12,240

Assessments, 1849:

Kunkle, Mary, v. 1317, in list unseated lands.

Roberts, A. S. & E., 25 acres improved	$2,000
375 " " 20	7,500
coal-breaker	200
12 blocks houses	4,800
stable & smith-shop	100
Total value	$14,600

Assessments 1850:

Mary Kunkle, 439 as. val. $6, 2634 list unseated lands.

Roberts. A. S. & E., 439, as. $50, val	$21,950
$13,500 taken off by order of com's, on certificate of assessor.	
20 blocks houses, $40	4,000
1 smith-shop	75
1 stable	75
1 coal-cracker	500
	$26,600

Assessor's certificate.

139 acres at 50$ and 300 acres at 5$ per acre, the buildings to stand as previously valued.

Hazleton, Oct. 17, 1850.

CASPER HORN,
Assessor.

107 *Extracts from books from commissioners' office for Luzerne County, Pennsylvania, produced on part of def'ts in the cases hereinafter mentioned.*

From transcript-book of unseated-land taxes from commissioners of Luz. County to treasurer of said county for taxes of 1844, '45, '46 & '47, '48 & '49, '50 & '51, '52 & '53.

HAZLE TOWNSHIP.

439 a's, 878 val., Kunkle, Mary, 1844, 2.63 county; State, 1.75.
1845, 2.63 " sch., 1.75; State, 2.63.
Paid Dec. 10, 1845, by W'm Drysdale.
407 a's, 814 val., Kunkle, Christian, 1846, co'y, 2.44; r'd, 4.47; sh., 2.44; State, 2.44.
1847, " 2.44; 2.44.
P'd by W. S. Roberts.
439 a's, Kunkle, Mary, 878 val., 1846, co'y, 2.63; r'd, 4.39; sch., 2.63; State, 2.63.
1847, " 2.63; " 2.63.
Paid by A. S. & E. Roberts, T. B. 263.
439 a's, val. 878, Kunkle, Mary, 1848, State, 2.63; co'y, 1.76; r'd, 1.76; sch., 2.63; State, 2.63.
1849, " 1.76; " .88; " 2.19.
Seated by A. S. & E. Roberts, says W. J. Woodward.
439 a's, v. 878, Kunkle, Mary, 1850, State, 2.63; co'y, 1.76; r'd, 2.63; sch., 2.63; State, 2.63.
1851, " 1.76; " 1.59; " 2.63.
Sale-book, p. 32.
439 a's, 21950, Kunkle, Mary, 1852, State, 6.59; co'y, 6.59.
1853, " 6.59; " 6.59.
Seated by A. S. & E. Roberts, says W. J. Woodward. (Treasurer's sale-book for 1852, 1854, & 1856, Hazle Township, sales 1852.)
439 as Kunkle, Mary; no taxes charged.
Seated by A. S. & E. Roberts.

108 Assessments, 1851:
Kunkle, Mary, 439 as v. 6, 2634, in list unseated lands.
Altered & impro'd:

Roberts, A. S. & E.,	139 a's imp'd	land, 50	$6,950
	300 a's unimproved	" 5	1,500
	18 houses		7,200
	2 out-houses		150
	2 coal-crackers		1,600
	1 saw mill		800
	2 slopes		150
		$14,440	$18,050

Assessments, 1852:
No list of unseated tracts.
Houses overpraised:

Roberts, A. S. & E.,	139 a's improved	land, 50	6,950
	300 " unimproved	" 5	1,500
	21 houses		8,400
	2 out-houses		150

2 coal-crackers	1,600
One steam saw-mill	500
2 shops	150
	17,325

Assessments, 1853:

Kunkle, Mary, 439 a's not in list unseated lands.

Roberts, A. S. & E., 139 a's imp'd land, 50	6,950
300 " unimp'd " 20	6,000
29 houses	11,600
2 out-houses	300
2 mine-fixtures	1,600
saw-mill	500
	26,950

Assessments, 1864:

Roberts, A. S. & E., 139 a's imp'd land, 50	6,950
300 " unimp'd " 20	6,000
31 houses	12,600
2 out-houses	300
Two mine-fixtures	2,200
One saw-mill	500
	28,550

Assessments, 1855:

Roberts, A. S. & E., 139 a's imp'd lands, 50	6,950
300 " unimp'd " 20	6,000
29 houses	11,600
2 out-houses	300
Two mine-fixtures	1,600
Saw-mill	500
	26,950

Assessments, 1858:

Roberts, A. S. & E., 400 a's imp'd land, 75	30,000
22 houses	7,450
3 slopes, fixtures & saw-mill	400
	37,850

109 Assessments, 1856:

Roberts, A. S. & E., 400 acres imp'd lands, 75	30,000
22 houses	7,450
three slopes, fixtures & saw-mill	4,000
twelve lots	1,800
	43,250

Assessments, 1859:

Roberts, A. S. & E., 400 ac's imp'd land, 75	30,000
22 houses	5,500
saw-mill	200
2 slopes, &c	6,000
	41,700

Assessments, 1860:

Roberts, A. S. & E., 200 a's imp'd land, 75	15,000
200 a's unimp'd " 10	2,000

22 houses	5,500
saw-mill	200
2 slopes, &c	6,000
	28,700

Assessments, 1861:

Roberts, A. S. & E., 200 a's imp'd land, 75	15,000
200 a's unimp'd " 10	2,000
22 houses	5,000
2 slopes & fixtures	6,000
1 saw-mill	200
	28,700

Assessments, 1862:

Roberts, A. S. & E., 200 imp'd land, 75	15,000
200 unimp'd " 10	2,000
22 houses	5,850
2 out-houses	100
saw-mill	200
2 slopes & fixtures	6,000
	29,150

Assessments, 1863:

Roberts, A. S. & E., 200 a's imp'd land, 75	15,000
200 a's unimp'd " 10	2,000
27 houses	6,000
4 out-houses	150
1 saw-mill, 2 slopes & fixtures	6,200
	29,350

Assessments, 1864:

Roberts, A. S. & E., 200 a's imp'd land, 75	15,000
200 a's unimp'd " 10	2,000
27 houses	6,000
4 out-houses	150
2 slopes & fixtures & saw-mill	6,200
	29,350

110 Assessment, 1865:

Roberts, A. S. & E., 250 a's imp'd land, 75	18,750
1,000 a's unimp'd " 10	10,000
28 houses	8,400
6 out houses	300
1 saw-mill	200
2 engine-houses	2,500
2 breakers	6,000
	46,150

Assessments, 1866:

Roberts, A. S. & E., 250 a's imp'd land, 75	18,750
1,000 a's unimp'd " 10	10,000
300 houses	9,000
6 out-houses	300
1 saw-mill	200
2 engine-houses	2,500

2 breakers	6,000
D'q' State	30,450
" county	36,000
Assessments, 1867:	
Roberts, A. S. & E., 250 a's imp'd land, 75	18,750
1,000 a's unimp'd " 10	10,000
35 houses	8,800
6 out-houses	300
1 saw-mill	300
2 engine-houses	2,500
2 breakers	6,000
State, 47,150; co'y	56,680
Assessments, 1868:	
Roberts, A. S. & E., 100 a's imp'd land, 75	7,500
1,319 a's unimp'd " 10	13,190
72 houses	8,100
2 slope-houses	2,000
2 breakers	4,000
2 out-houses	400
	35,190
Assessments, 1869:	
Roberts, A. S. & E., 2 slope-houses	2,000
2 breakers	4,000
2 houses	400
Lands, 100 a's imp'd, 75, $7,500; 1,319 unimp'd, 10, $13,190	20,690
36 houses, bl'k	8,100
	35,190
Assessments, 1870:	
Roberts, A. S. & E., 2 slope-houses	2,000
2 breakers	4,000
2 houses	400
36 block-houses	8,100
Lands, 100 a's imp'd, 75, 7,500; 1,319, 10, 13,190	20,690
	35,190

111 Assessments for 1871—
Warrant issued 3d Dec., 1870.

Roberts, A. S. & E., 74 houses	8,500
2 slope-houses	–,000
2 breakers	4,000
100 a's imp'd land, 75	7,500
1,442 a's unimp'd land, 10	14,427
	37,427

It is hereby agreed that the foregoing extracts from books in the commissioners' office in and for Luzerne County, showing assessments and such facts as are stated above and for the years above mentioned, may be read in evidence on the trial of all or either of the following cases, to wit:

In the circuit court of the United States for the western dist. of Penn'a.

JAMES TURNBULL, A CITIZEN OF THE REPUBLIC of Mexico,
vs.
ARIO PARDEE, A CITIZEN OF PENN'A. } No. 14 of June term, 1871.

In the circuit court of the United States for the western dist. of Penn'a.

JAMES TURNBULL, J'R, A CITIZEN OF THE REPUBLIC of Mexico,
vs.
ARIO PARDEE, A CITIZEN OF PENN'A. } No. 18 of June t., 1871.

In the circuit court of the United States for the western dist. of Penn'a.

JAMES TURNBULL, A CITIZEN OF THE REPUBLIC of Mexico,
vs.
ARIO PARDEE & J. GILLINGHAM FELL, CITIZENS of Pennsylvania. } No. 20 of June term, 1871.

With the same effect as if the books from which said extracts are made were produced in court and duly proved. 19 June, 1872.

It is also agreed that in the case of W'm Drysdale ad'r of Alexander Turnbull, dec'd, vs. James Turnbull and Alexan'r Turnbull, j'r, No. 112 46, April term, 1827, common pleas of Luzerne County, Penn'a, diligent search has been made in the prothonotary's office for said county of Luzerne for the writs of fi. fa. and said vend. exp's, issued on said judgment No. 46, Ap. t., 1827, out of said court, and that the said writs are lost and cannot be found, and that on the trial of the aforesaid cases in the circuit court of the United States the facts of search for and loss of said writs of fi. fa. and vend. exp's shall be admitted, and no witness need be called on the trial of said cases, or either of them, to prove search & loss of said writs.

It is also agreed that certified copies from books in com'rs' office Luz. Co'y, Penn'a, hereto attached, shall and may be given in evidence on trial of above cases, or either of them, with the same effect as if the said books were produced and duly proved.

It is also agreed that annexed draft and statement of survey of Mary Kunkle tract, signed J. P. Weller, may be given in evidence in trial of either of the above-stated cases with like effect as to proof of location as if said J. P. Weller were produced and examined as a witness thereof.

June 19, 1872.

O. H. WHEELER,
Pl'ff's Att'y.
ARMSTRONG & LYNN,
Att'ys for Def'ts.

County tax on unseated lands.—1819.

113 SUGAR LOAF TOWNSHIP.

Acres.	Warrantee name.	Value.	Tax.	Owners.
439. 50.	Kunkle, Mary.	439	2.19½	Robert Milner.

We, the commissioners of the county of Luzerne, do hereby certify that the foregoing words and figures are a true copy of the assessment of unseated lands, made by the commissioners of Luzerne County, of county taxes upon the above tract of land, as contained in said county assessment-book, for the year one thousand eight hundred and nineteen, certified as a transcript of said taxes to the treasurer of said county.

Witness our hands and the seal of said Luzerne County, Pennsylvania, this twenty-second day of May, in the year of our Lord one thousand eight hundred and seventy-two.

COMMISSIONERS' OFFICE, [SEAL.] LUZERNE COUNTY.

G. W. BAILEY,
CHA'S F. HILL,
County Comm'rs of Luzerne County.

114 *Treasurer's sale-book.*—1820.

SUGAR-LOAF TOWNSHIP.

439.	Kunkle, Mary.	Years.	County.	Roads.	Costs.	Total.	Whole.
		1818 1819	2. 19½ 2. 19½		2. 62½	July 10 7. 01½	

JACOB CIST.

Deeded & paid.

We do hereby certify that the above words and figures are a true copy of entries in sale-book of G. M. Hollenback, treasurer of the county of Luzerne, for the year one thousand eight hundred and twenty, relating to the above-name tract of land.

Witness our hands and the seal of said Luzerne County this twenty-second day of May, A. D. 1872.

[COMM'RS' SEAL.]

G. W. BAILEY,
CHAS. F. HILL,
County Comm'rs of Luzerne County.

115 STATE OF PENNSYLVANIA,
County of Luzerne, ss:

I, Peter Seibel, prothonotary of the court of common pleas in and for said county, do certify that G. W. Bailey and Charles F. Hill, by whom the foregoing attestation was made, and who have thereunto subscribed their names, were at the time of making thereof, and still are, county commissioners of Luzerne County, duly elected and qualified.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Wilkesbarre, this 22 day of May, A. D. 1872.

{ SEAL OF C'T OF COM. PLEAS OF LUZ. CO. }

PETER SEIBEL,
Prothonotary.

116 Testimony offered and taken and proceedings had on the part of the plaintiffs in rebuttal.

O. H. WHEELER, called as a witness on behalf of the plaintiff in rebuttal, being first duly sworn, testifies as follows:

I and Judge Black, in June a year ago, received and receipted for the original files of the papers in the estate of Alexander Turnbull, deceased, to the clerk of the orphans' court of Philadelphia. I brought them up here and put them into Judge Maynard's safe a year ago. There was a copy of an assignment from W'm King to Mary B. Huber, dated in 1840, that was attached to the record that I had. I first went to Judge Cadwallader, the auditor, with a memorandum of the dates. We examined in his office, and went again the next day, but could not find the deed from W'm King to Mary B. Hubber. Then I went to the court of common pleas and got all the papers there in the matter of the assignment, but could not find this deed. I then went to the printer's office, but there was nothing there. I then looked after the papers in the
117 record that went to the supreme court; found the papers had not been returned; got a remittitur, and then I found a copy of the deed. I searched all the papers in Luzerne County, but did not find the original. I also inquired of M'r's Mary Hubber, but she gave me very little information and said she had no other papers, but referred me to the courts.

Cross-examination:

When I applied for the order of the court to get the original papers in the orphans' court, I did not give notice to the opposite counsel in this case. I have never seen the original deed from William King to M'r's Mary B. Hubber.

(Pl'ff's counsel offer copy of deed from William King to Mary B. Hubber, the mother of the plaintiff.

Defendant's counsel object.

Objection sustained.)

The above is a correct presentation of the evidence before the court and jury on the trial of this case on the part of the plaintiff.

ARMSTRONG & LINN,
Att'ys for Def't.

118 Supreme Court of the United States.

vs.
ARIO PARDEE ET AL. { Of October term, in the year of our Lord one thousand eight hundred and seventy-two.

Afterwards, to wit, on the second Monday of October, in this same term, before the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, comes the said plaintiffs, by J. W. Maynard, their attorney, and say that in the record and proceedings aforesaid there is manifest error in this, to wit: in the charge of the

court as contained in the bill of exceptions, and in the ruling of the said court below in sustaining the objection of defendant's counsel to the copy of deed of assignment from William King to Mary Hubber, offered in evidence by plaintiff's counsel, and in ruling out said testimony.

And the said plaintiffs pray that the judgment aforesaid may be reversed and annulled and altogether held for nought, and that they may be restored to all things which they have lost by occasion of the said judgment.

J. W. MAYNARD,
Pl'ffs' Att'y.

119 In the circuit court of the United States, western district of Pennsylvania.

WILLIAM KING ET AL.
vs.
ARIO PARDEE ET AL. } No. 14. June term, 1871.

UNITED STATES OF AMERICA,
Western Dist. of Penn'a, ss:

O. H. Wheeler, being duly sworn according to law, deposes and says that he is one of the attorneys of record in said suit above entitled, and that the value of the interest of the plaintiffs in the land claimed by them greatly exceeds the sum of five thousand dollars, and further says not.

O. H. WHEELER.

Sworn & subscribed before me this 7th day of October, A. D. 1875.
HEPBURN McCLURE, *Clerk.*

(Indorsement on cover:) No. 173. William M. King et al., heirs at law of James Turnbull, dec'd, plaintiffs in error, vs. Ario Pardee, Edward Roberts et al., ex'ors of A. S. Roberts, dec'd, Edward Roberts, j'r, et al. W. Pennsylvania C. C. U. S. Filed 9th October, 1875.

SUPREME COURT OF THE UNITED STATES.

No. 173.

WILLIAM M. KING ET AL., HEIRS-AT-LAW OF JAMES TURNBULL, DECEASED, PLAINTIFFS IN ERROR,

vs.

ARIO PARDEE, EDWARD ROBERTS, ET AL., EXECUTORS OF A. S. ROBERTS, DECEASED, EDWARD ROBERTS, JR., ET AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

ADDITION TO RECORD.

FILED NOVEMBER 15, 1877.

1 Supreme Court of the United States.

No. 173.

WILLIAM M. KING ET AL., HEIRS-AT-LAW of James Turnbull, deceased, Plaintiff in Error, *vs.* ARIO PARDEE, EDWARD ROBERTS, ET AL., Executors of A. S. Roberts, deceased, Edward Roberts, Jr., et al.	In error to the circuit court of the United States for the western district of Pennsylvania.

The following evidence offered and received on the trial in the court below on behalf of the defendant in error, who was defendant below, is omitted from the transcript of record as printed in the Supreme Court of the United States.

2 This indenture, made the fifth day of November, one thousand eight hundred and twenty-seven, between Alexander Turnbull, of the county of Philadelphia, of the one part, and William King, of the said county, of the other part, witnesseth that the said Alexander Turnbull for and in consideration of the sum of one dollar by the said William King to him in hand paid, at and before the ensealing and delivery hereof, the receipt whereof is hereby acknowledged, as for other good causes and considerations him, the said Alexander, thereunto moving, have granted, bargained, sold, transferred, and set over, and by these presents do bargain, sell, transfer, assign, and set over to the said William King, his administrators and assigns, all the real estate of him, the said Alexander Turnbull, whatsoever and wheresoever situated, together with all the goods, wares, merchandise whatsoever and wheresoever the same be, whereof the said Alexander is possessed, and also

3 all the household goods of him, the said Alexander Turnbull, (a schedule whereof is hereunto annexed,) and all and singular the moneys, debts of whatsoever nature of him, the said Alexder, and which are due, owing, and payable to him, and all books, papers, and evidences of such debts. To have and to hold the said real estate of the Alexander Turnbull hereby assigned and transferred, or intended so to be, and for the proper use and behoof of him, the said William King, his heirs and assigns, executors and administrators forever, in fee simple, and to have and to hold, to take and receive the other premises hereby assigned him, the said William King, his assigns, executors, and administrators forever, upon this special trust and confidence nevertheless and to and for the purpose, that the said William King shall, within a reasonable time, either by public or private sale, sell and transfer the said real estate to the highest bidder or purchaser, and such sale being

4 so made by the said William King, that he may sign, seal, and acknowledge and deliver to the purchaser such good and sufficient deed or deeds of conveyance as shall be legally required, and that the said William King in any manner aforesaid,

and in the time or times aforesaid, convert all and singular the other granted premises into money, and do and shall collect all and singular the debts and sums of money hereby assigned, and do and shall apply the money that may arise from the said sales, or which may be collected as aforesaid, or so much as may be necessary therefor. In the first place, to the payment, discharge, and satisfaction of the reasonable cost of the execution of this trust. In the second place, toward the payment of one hundred and twenty dollars and interest until paid, by the said Alexander owing and justly due William King for money lent and his endorsement of my note to Thomas Town. In the third place, to the payment of
5 two hundred and twenty-nine dollars and interest until paid, by the said Alexander owing and justly due Isaac Hubber. In the fourth place, to the payment, in equal and ratiable proportions according to their respective debts, all the creditors of the said Alexander Turnbull, and that the said trustees, after paying the aforesaid debts and expenses of executing this trust, do and shall pay the balance which may remain to Mary Turnbull, his wife, her executors, administrators, or assigns, and the better to enable the said trustee to carry this trust into full and perfect execution the said Alexander Turnbull doth by these presents constitute and appoint the said William King his attorney, for him and in his name to execute and perform all such acts and things, in deed and in law of whatsoever nature and kind, as be lawful and necessary for the completion of the trust before created, with full power of substitution.

ALEXANDER TURNBULL. [SEAL.]

6 Sealed and delivered in the presence of us—
PETER WILLIAMSON,
JAMES BUNTING.

COUNTY OF PHILADELPHIA, *ss.*

Personally appeared the above-named Alexander Turnbull and deposes and says the above is his act and deed.

JAMES ENEN, JR., [SEAL.]
Justice of the Peace.

Schedule of the property intended to be passed under the within assignment.

All the interest of Alexander Turnbull in the estate of Mary Turnbull, late Hubber, his wife, previous to intermarriage, if any he had.

All the interest of Alexander Turnbull in the real and personal estate of his father, Alex. Turnbull, dec'd.

All outstanding debts due him.

Household goods except those free from executions..

All estate and property beside whatsoever of A. Turnbull
7 that may not be comprised in the above schedule. Philadelphia, Nov. 5, 1827.

PHILADELPHIA COUNTY, *ss.*

On the 28th day of November, A. D., 1827, before me, one of the justices of the peace in and for the county of Philadelphia, personally appeared Alexander Turnbull, within named, and acknowledged within deed of assignment to be his act and deed, and desired the same may be recorded as such.

Witness my hand and seal the day and year aforesaid.

JAMES ENIN, JUN.,

Recorded Nov. 30th, 1827. *Justice of the Peace.*

8 To show the right of the defendants to maintain their defence, and as part of their chain of title, there was shown in evidence the will of Algernon S. Roberts, and also the will of Edward Roberts, who are the grantees in the deed from William Drysdale and wife and Margaret Turnbull, bearing date the 21st day of Oct., 1846, for *inter alia*, the "Mary Kunkle" tract.

It was not disputed that the defendants of record were the legal representatives of the said Algernon S. Roberts and Edward Roberts.

These wills, which are long, are, therefore, not attached *in extenso*, the following extracts being all that are deemed material.

Will of A. S. Roberts.

Dec. 12, 1864. Will of Algernon S. Roberts. Sept. 25, 1865, probate before the register of wills in the city of Philadelphia, Penna. Sept. 25, 1865, letters testamentary granted to A. Cuthbert Roberts, A. S. Roberts, jr., Percival Roberts, and G. Theodore Roberts, executors.

By this will the testator disposed of his whole estate and,
9 *inter alia*, provided as follows:

Item. As for and concerning all the rest, residue, and remainder of my estate, real, personal, and mixed, whatsoever and wheresoever, which I may possess, or may hereafter acquire, I do hereby give, bequeath, and devise the same, and every part thereof, unto my executors hereinafter named, and the survivor and survivors of them, and the heirs, executors, administrators, and assigns of such survivor, to hold the same in trust nevertheless, and to and for the following uses, interests, and purposes, that is to say: In trust to take charge of the same and collect and recover and receive the rents, issues, dividends, income, and profits thereof; protect, manage, build or improve, rent and lease the same to the best advantage; extend the railways, open new and other veins and mines in and on my coal and other mineral lands, and build and erect buildings
10 thereupon as they or a majority of them may deem best and proper, (always acting in conjunction with my brother Edward and his legal representatives, as far as possible, in matters concerning my said coal and other mineral lands, he being equally interested with me therein,) and after deducting the amount of taxes,

cost of repairs and improvements, and other necessary changes, and the expense of executing this trust, to pay one full equal undivided third part thereof unto, &c.

Item. I nominate, constitute, and appoint my said four sons, Anthony Cuthbert Roberts, Algernon Sidney Roberts, junior, Percival Roberts, and George Theodore Roberts, executors of this my last will and testament, who shall receive for their services a commission of six per cent. only on the net income of each year during the existence of the trust by this my will created, to be equally divided between them and the survivors of them, but no
11 commission shall be allowed them at any time on the principal of my estate.

12 *Will of Edward Roberts.*

June 13, 1866. Will of Edward Roberts. Nov. 20, 1872, probate before the register of wills in the city Philad., Pa. Nov. 20, 1872, letters testamentary granted to Edward Browning, Howard Roberts, and Edward Roberts, jr., executors.

By this will the testator disposed of his whole estate and, *inter alia*, provided as follows:

Item. As for and concerning all the rest, residue, and remainder of my estate, real and personal, whatsoever and wheresoever, which I now possess, or may hereafter acquire, I do hereby give, bequeath, and devise the same, and every part thereof, unto my said son, Howard Roberts, and my said son-in-law, Edward Browning, and the survivor of them, and the heirs, executors, administrators, and assigns of the survivor, to hold the same in trust, nevertheless, and to and for the following uses, intents, and purposes, that is to say: In trust to take charge of the same and collect, recover, and
13 receive the rents, issues, dividends, and income and profits thereof; protect, manage, build on, improve, rent, and lease the same to the best advantage; extend the railways, open new and other veins and mines in and on my coal and other mineral lands, and build and erect buildings thereupon as they or the survivor of them may deem best and proper, (always acting in conjunction with the legal representatives of my deceased brother, Algernon S. Roberts, as far as possible, in matters concerning such of my coal and other mineral lands as they are with me interested in, and always in conjunction with A. Pardee and J. G. Fell, as far as possible, in matters concerning such lands as are held in common between us, and in all cases advising with my said son, Edward Roberts, junior, and obtaining the benefit of his knowledge and judgment,)
14 and after deducting the amount of taxes, cost of repairs and improvements, and other necessary charges, and the expenses of executing this trust, then in trust to pay over quarterly an equal portion and share of the net income of my said residuary estate unto, &c.

Note.—The Mary Kunkle tract is included in the residuary estate.

Item. I nominate, constitute, and appoint my said two sons, Edward Roberts, junior, and Howard Roberts, and my said son-in-law, Edward Browning, executors of this my last will and testament, hereby revoking all wills and testaments by me at any time heretofore made, and declare these presents only to be and contain my last will and testament.

First Codicil.

June 25, 1868. First codicil.

By this codicil the testator provides, *inter alia*, as follows:

Item. I constitute and appoint my said son, Edward Rob-
15 erts, junior, one of the executors of my will, to act as such in conjunction with the said Howard Roberts and Edward Browning, and in all other respects I ratify and confirm my foregoing will.

Dec. 4, 1871. Second codicil.

Jany. 2, 1872. Third codicil.

Note.—The second and third codicils contain nothing which changes the distribution of or disturbs the trust as to the "Mary Kunkle," as part of the residuary estate of the testator.

16 Agreement of lease between Algernon S. Roberts and Edward Roberts, of the city of Philadelphia, of the first part, and Ario Pardee, junior, of Hazleton, in the county of Luzerne, and State of Pennsylvania, and J. Gillingham Fell, of the said city of Philadelphia, of the second part: Witnesseth, that for and in consideration of one dollar to them in hand paid and of the covenants hereinafter mentioned to be entered into and performed by the said parties of the second part, the said parties of the first part have, and by these presents do, lease, demise, and to farm let, for the purpose of mining coal and such other purposes as may necessarily be connected therewith, unto the said parties of the second part, for the term of five years from the first day of January, eighteen hundred and forty-seven, all that portion of their land lying in the township of Hazle, in the county of Luzerne, aforesaid,
17 being part of the Mary Kunkle tract, bounded on the east by lands of the Hazleton Coal Company and included between the northern crop of the Hazleton coal veins and the middle of that coal basin, together with the privilege of cutting timber for the use of the mines and stationary works connected therewith from such other portions of said tract as may be most convenient, reserving to the said parties of the first part the privilege of preserving such parts or portions of the trees as they may designate to be preserved for shade or ornamental purposes. The said parties of the first part also agree to build, for the accommodation of the miners and workmen connected with the business, a sufficient number of suitable houses. Also, to construct a railroad from the opening of the mines to connect with the Hazleton railroad, and to build and put in running order a saw-mill on Cran-

18 berry creek below the mines, at the first convenient location where sufficient fuel can be found. Also, to drive a drain or a ditch from such point on Cranberry creek to the opening of the present drift, as shall drain of depth of twelve feet perpendicular below the bottom of the present drift. The said parties of the second part hereby agree to mine from the land leased as hereinbefore mentioned, at least one hundred and fifty thousand tons of coal, in proportions as follows, viz: during the first and second years, thirty thousand tons; during the third year, forty thousand tons; during the fourth year, forty thousand tons; during the fifth year, forty thousand tons; and not to exceed seventy thousand tons during the first and second years together, and sixty thousand tons during each succeeding year, without the consent of the said parties of the first part. And the said parties of the second part agree to work all the veins which have been mined at the Hazleton company's mines, so far as they will produce mer-
19 chantable coal, in a uniform, judicious, and economical manner, with due regard to the interest of the said parties of the first part, who shall at any time be permitted to inspect the workings. It is further agreed that the said parties of the first part reserve the surface-soil not necessary for mining. And the said parties of the second part are to pay the said parties of the first part, their executors, administrators, or assigns, for every ton of coal so mined and delivered into boats, or which may otherwise be disposed of by the said parties of the second part, excepting such coal as may be necessary for the use of the engine, whether locomotive or stationary, connected with the work, or coal customary to furnish to the miners engaged therein, at the rates following, to wit: during the first, second, and third years of this agreement, thirty cents per ton, and during the fourth and fifth year, forty cents per ton
20 for all merchantable coal above the size of chestnut coal, and for chestnut coal, half of the above prices. The payments to be made monthly during the boating season; that is to say, all coal shipped or otherwise disposed of during any one month shall be paid for before the twentieth of the ensuing month, but coal stocked during the winter shall not be paid for until shipped. The ton to be twenty-two hundred and forty pounds. The weight to be ascertained from the weigh-lock weight of the Lehigh canal for coal shipped and from the books of the said parties of the second part, or other fair and equitable means for the coal otherwise disposed of. The toll on the railroad of the said parties of the first part on the coal mined under this lease and the engines and cars used in transporting it to be considered as included in the payments above specified and no extra charge to made for it.

The said parties of the second part also agree to keep the
21 mines, railroad, drain, saw-mill, and houses mentioned in this agreement, in good working order and repair, and to leave them at the termination of this lease in like good order and condition, excepting natural decay and risk of fire or flood, not

avoidable by ordinary care. Paying to the said parties of the first part such rent monthly as may be usual for the use of the houses, deducting therefrom ten per cent. for collecting and keeping them in repair.

They also agree to use due care to prevent waste and destruction of timber and to furnish from the saw-mill to the said parties of the first part at cost such lumber, cut on the premises, as they may require for building houses or other work connected with this agreement. And shall also furnish from the said saw-mill, excepting cutting and hauling to and from the mill, such lumber as the
22 said parties of the first part may require for the working of another mine on their lands on the above-named terms, provided the mill has sufficient capacity to cut the quantity in addition to what the said parties of the second part may require. And it is further agreed that the said parties of the second part are not to sell or dispose of any timber or lumber sawed or taken from the before-mentioned land. And it is hereby further mutually agreed that in case of dispute arising under this agreement between the parties thereto, they shall choose a competent and suitable person as an umpire, and if they cannot agree on one person, each shall choose one, and they two not agreeing shall choose a third, the decision of any two of whom, or of the one, if one only be chosen, shall be final and conclusive between the parties, even if it extends to the forfeiture of this lease. And it is further agreed that
23 if at the termination of this lease, whether by forfeiture, by death of either of the parties of the second part, or the expiration of the five years specified, they or the survivors of them cannot agree on the terms of its continuance, the property of the parties of the second part connected with the work, such as locomotives and stationary steam-engines, cars, mining fixtures, and other permanent improvements about the mine, shall be taken by the said parties of the first part, their heirs or assigns, at a fair and equitable valuation, which value, if they cannot agree, shall be ascertained in the manner above provided for the settlement of disputes between the parties. In witness whereof we have hereunto set our hands and seals, this twenty-third day of March, in the year of our Lord eighteen hundred and forty-seven, 1847.

ARIO PARDEE, JR. [SEAL.]
J. GILLINGHAM FELL. [SEAL.]
ALGERNON S. ROBERTS. [SEAL.]
EDW. ROBERTS. [SEAL.]

Sealed and delivered in the presence of us—
24 ALEX. ARDLEY,
A. S. ROBERTS, Jr.,
Witness to J. Gillingham Fell.

A. S. ROBERTS, Jr.,
LEWIS DAVENPORT,
Witness to the other parties.

25 Memorandum of agreement made this twentieth day of February, 1850, in addition and extension of a lease between A. S. Roberts and Edward Roberts, of the one part, and Ario Pardee, Jr., and J. Gillingham Fell, of the other part, and bearing date the 23d of March, 1847: Witnesseth, that the said respective parties hereby agree to continue and extend the said lease for the term of one year, that is, to the first of January, 1853, on the same terms and conditions in every particular, excepting the price or rent per ton for coal leave, which shall be thirty cents per ton for the year 1850, and thirty-two cents per ton for the remaining two years; chestnut coal to be half that price; and the privilege is also hereby granted to the party of the second part to renew and extend the said lease for the term of three years, that is, to the first of January, 1856, at the same rent as above provided for the last two years.

26 It is also further mutually agreed that the party of the first part will rent and to farm let to the party of the second part an additional coal opening immediately south of the Cranberry mines, to be called the Crystal Bank Colliery, and which is now being opened, the terms, condition, and rent of said new mine to be the same in every particular as the aforementioned lease and extension, and to include the same veins of coal on both the south and north dip so far as they may extend on the land of A. S. and E. Roberts in the basin as now opened; that is, the party of the second part is to pay the party of the first part, their heirs and assigns, thirty cents per ton rent for the present year, and thirty-two cents per ton for the remainder of the lease and extension, chestnut coal being at half that price.

27 The rent of the houses, use of the railroad, cutting of timber, use of saw-mill, and keeping all in good order shall be as set forth in the first mentioned lease, premising that the party of the first part shall make a railroad to the coal mine, sink a slope, and erect such miners' houses as may be necessary, and the party of the second part shall make all other improvements that may be required. It is also agreed that the party of the second part shall not sell or transfer the above said lease and this addition and extension thereof without the consent of the parties of the first part.

In witness whereof they have hereunto set their hands and seals the day and year first above written.

A. PARDEE, JR. [SEAL.]
J. G. FELL. [SEAL.]
ALGERNON S. ROBERTS. [SEAL.]
EDW. ROBERTS. [SEAL.]

Witness to A. Pardee and A. S. Roberts—
GEO. B. MARKLE.

Witness to J. G. Fell and Edw. Roberts—
A. S. ROBERTS, JR.

28 This agreement, made the nineteenth day of February, in the year one thousand eight hundred and sixty-three, between Algernon Roberts and Edward Roberts, of the city of Philadelphia, party of the first part, and Ario Pardee, of Hazleton, Luzerne county, Pa., and J. Gillingham Fell, of the city of Philadelphia, party of the second part, witnesseth: That for and in consieration of one dollar in hand paid to the party of the second part, and of the covenants hereinafter mentioned to be entered into and performed by the said party of the second part, the party of the first part has, and by these presents does demise and lease, for the purposes of mining coal, and for such other purposes as may necessarily be connected therewith, unto the party of the second part, for the term of seven years (7) from the first day of January, in the year one thousand eight hundred and sixty-three (1863), all those two collieries, coal works, mines, and buildings connected therewith, and
29 dwelling-houses on the Mary Kunkle tract of *of* land west of and adjoining the Hazleton Coal Company's estate, with the use of the railroads connecting the collieries with the Hazleton railroad, and with the use of so much of the land as is necessary for mining purposes; also with the right of cutting and using timber on that and the adjoining tracts southward of the Phineas road or roads to Catawissa Valley, of the party of the first part for mining operations at the aforesaid collieries. The party of the first part reserves, however, the surface soil not above appropriated, and all coal seams or beds not connected with and necessary for the working of said mines, and also the right of using its railroads or charging tolls for all coal carried thereon, except that of the party of the second part. In order to drive new slopes, and to greater depth than the present ones, the party of the first part agrees to put up at each of the said collieries, and at its own expense, a new engine-
30 house, with steam engines and boilers of sufficient power to do the hoisting of coal and pumping of water from the said mines, and also to extend the railroad tracks to any new colliery improvements that may be made. The party of the second part agrees, at its own expense, to drive slopes and gangways, and to make and construct all other colliery buildings and improvements, at and appurtenant to said mines, whether above or below ground, and to keep in good substantial working order, during the entire term of this lease, all the buildings and machinery of both parties connected therewith. The party of the first part to insure or assume the fire risk of the three engine and boiler houses, with the engines and boilers therein, [one now built and two to be built.] And the party of the second part to insure or assume the fire risk of all the other colliery buildings and machinery, as also the
31 saw-mill. The party of the first agrees to build such additional dwelling-houses as may be necessary to accommodate the miners and workmen employed at said collieries, and to keep all the dwelling-houses in tenantable order. The party of the sec-

ond part agrees to mine and send away from the mines hereby leased ninety thousand tons of coal per annum during the full term of this lease, unless prevented by causes not within its control; and further, to work all the seams or benches of coal in said mine, so far as they will produce merchantable coal, in a skillful, judicious, and economical manner, with due and proper regard to the interest of the party of the first part, who shall at all times, either personally or by its agents, have free access to inspect the working and management thereof. The party of the second part agrees to pay to the party of the first part, or its heirs or assignes, for all coal mined and sold or sent from said collieries [except such as may be necessary
32 for locomotives to transport it to Hazleton, and for stationary engines connected with the works, and such as is necessary for miners employed thereat] the following rates, to wit: thirty-two cents per ton for all coal above the size of chestnut, or that which will pass through the meshes of the screens five-eighths ($\frac{5}{8}$) of an inch square, and twenty cents per ton for chestnut coal. No charge to be made for "pea coal," or that which passes through meshes of three-eighths ($\frac{3}{8}$) of an inch square, but "pea coal" is to be used for stationary engines and wherever practicable. And in like manner to pay such monthly rent as can be obtained for the dwellings, less five per cent. commission for collecting. Payments to be made monthly for all the coal sold or sent away, on or about the tenth (10th) of each month for the preceding month. The ton in all cases to be 2,240 lbs. The weights to be ascertained by the scales of the railroad companies, the weigh-locks of the canal companies, and by the books of the party of the second part. The party of the first
33 part will furnish the iron rails necessary for the repair of the surface railroads, and the party of the second part will furnish all other materials, and at its own expense maintain said railroads in good and permanent condition, in consideration of no charge being made to said party for tolls on coal. This lease shall shall not be transferred or assigned without the consent in writing of the party of the first part. It is hereby mutually agreed that in case of dispute or disagreement between the parties hereto, they shall choose a competent and disinterested person as umpire, and if they cannot agree upon one person each shall choose one and they two a third, the decision of any two of whom, or the one, if only one be chosen, shall be final and conclusive between the said parties. And it is further agreed, that at the termination of this lease the property of the party of the second part connected with the said works, such as colliery buildings, steam engines,
34 machinery, pumps and mining fixtures, mine rail-iron, and drift cars, shall be taken by the party of the first part, its heirs or assigns, at a fair cash valuation at the time of sale and transfer. Such valuation, if they cannot agree, to be made in the manner provided for the settlement of disputes between the parties hereto.

In witness whereof we have hereunto set our respective hands and seals, this nineteenth day of February, in the year one thousand eight hundred and sixty-three.

ALGN. S. ROBERTS. [SEAL.]
EDW. ROBERTS. [SEAL.]
A. PARDEE. [SEAL.]
J. G. FELL. [SEAL.]

Signed, sealed, and delivered in the presence of us.
R. H. HENNISS.
JOHN J. KIRK.

35 This agreement, made the 19th day of March, 1870, between Anthony C. Roberts, Algernon S. Roberts, Percival Roberts, and George T. Roberts, executors of Algernon S. Roberts and Edward Roberts, all of the city of Philadelphia, party of the first part, and Ario Pardee, of Hazleton, Luzerne Co., Pa., and J. Gillingham Fell, of the city of Philadelphia, party of the second part, witnesseth: That for and in consideration of one dollar in hand paid by the party of the second part, and of the covenants hereinafter mentioned to be entered into and performed by the said party of the second part, the party of the first part has and by these presents does demise and lease for the purpose of mining coal and for such other purposes as may necessarily be connected therewith, unto the party of the second part for the term of ten (10) years from the first day of January, 1870, all those two collieries, coal works, mines and buildings connected therewith, and dwelling-houses, and the following described premises situated in Hazle township,
36 Luzerne Co., Pennsylvania, namely: the Mary Kunkle, Christian Kunkle, and the southern portion of the Sarah Kunkle tracts of lands west of and adjoining the Lehigh Valley Railroad Co.'s estate, (late the Hazleton R. R. Co.'s,) with so much of the timber on the said tracts as is necessary for mining purposes. The party of the first part resumes, however, the surface soil not above appropriated.

The party of the second part agrees at his own expense to drive slopes and gangways, and to make and construct all other colliery buildings and improvements at and appurtenant to said mines, whether above or below ground, and to keep in good substantial working order during the entire term of this lease, all the buildings and machinery of both parties connected therewith. The party of the first part to insure or assume the fire risk of the two engine and boiler houses, with the engines and boilers therein, and the
37 party of the second part to insure or assume the fire risk of all the other colliery buildings and machinery, as also the saw-mill.

The party of the first part agrees to build such additional dwelling-houses as may be necessary to accommodate the miners and workmen employed at the collieries on said premises, and to keep all the dwelling-houses in tenantable order.

The party of the second part agrees to mine and send to market from the lands hereby leased ninety thousand tons of coal per annum during the full term of this lease, unless prevented by causes not within its control; and further, to work all the seams or benches of coal, so far as they will produce merchantable coal, in a skillful, judicious, and economical manner, with due and proper regard to the interests of the party of the first part, who shall at all times, either personally or by its agents, have free access to inspect
38 the working and management thereof. The party of the second part agrees to pay to the party of the first part, or its heirs or assigns, for all coal mined and sold or sent from the collieries, except such as is necessary for stationary engines connected with the works, and such as is necessary for the miners employed thereat, the following rates, to wit: fourteen per cent. upon the price of furnace lump coal at Mauch Chunk; on all the coal above the size of pea coal, and for pea coal, five cents per ton. The minimum price or rent not to be less than thirty-six cents per ton. Pea coal to be used for the stationary engines and wherever practicable.

And in like manner to pay such monthly rent as can be obtained for the dwelling-houses, less five per cent. commission for collecting. Payments to be made monthly for all the coal sold or sent away, on or about the 10th of each month for the preceeding month. The ton in all cases to be 2,240 lbs. The weights to be as-
39 certained by the scales of the railroad companies, the weigh-locks of the canal companies, and by the books of the party of the second part. This lease shall not be transferred or assigned without the consent in writing of the party of the first part.

It is hereby mutually agreed that in case of dispute or disagreement between the parties hereto, they shall choose a competent and disinterested person or umpire, and if they cannot agree upon one person, each shall choose one and they two a third, the decision of any two of whom, or the one, if only one be chosen, shall be final and conclusive between the said parties. And it is further agreed that at the termination of this lease the property of the party of the second part connected with the said works, such as colliery buildings, steam engines, machinery, pumps and mining fixtures, mine rail iron, and drift cars shall be taken by the party of the
40 first part, its heirs or assigns, at a fair cash valuation at the time of sale and transfer; such valuation, if they cannot agree, to be made in the manner provided for the settlement of dispute between parties hereto.

In witness whereof we have hereunto set our respective hands

and seals, this nineteenth day of April, in the year one thousand eight hundred and seventy.

A. CUTHBERT ROBERTS. [SEAL.]
A. S. ROBERTS. [SEAL.]
PERCIVAL ROBERTS. [SEAL.]
G. THEO. ROBERTS. [SEAL.]
EDW. ROBERTS. [SEAL.]
ARIO PARDEE. [SEAL.]
J. G. FELL. [SEAL.]

Witnesses.
H. C. COCHRAN.
H. H. WILSON.

41 A. Pardee, sworn.

I know Mary Kunkle tract in Luzerne; I know it as early as 1836–7 as an adjoiner to Hazleton Coal Co. I leased it from A. and E. S. Roberts in 1847, in March 23, 1847.

[Paper shown. Lease dated March 23, 1847. A. and E. S. Roberts to A. Pardee, Jr., and J. G. Fell.]

I entered upon the property under this lease. We went on and did the work necessary to open a mine, drove a drain, erected a breaker, and commenced shipping coal; so much work went on. Roberts was busy putting up houses, building R. R. I can't say how many houses were built in one and two years, perhaps twenty. Houses have been put up ever since, as the work required. Now nearly one hundred houses; there were one hundred, but four were burned. There are now ninety-five houses for workmen. There are two on John Kunkle, ninety-five on Mary Kunkle. In spring of 1847 Roberts built a R. R. from Hazleton to the Mary Kunkle tract, where we were mining, about one and a quarter miles
42 long. There was one main track and two sidings. Three years after we opened the Crystal Ridge mine, on the same tract, and we laid a railroad to that mine about one-half a mile long. The original mine was called the Cranberry mine. Nearly all of the best railroad was on the Mary Kunkle.

The lease was renewed from time to time down to the present. I now lease from them or their heirs.

Paper dated Feb'y 20th, 1850.

The signatures are mine, Mr. Fell's, and Roberts'. A. and E. S. Roberts are dead and I lease from their heirs.

I can't say exactly the value of work done in 1847. In my judgment the improvements put up by Roberts in 1847 were over $30,000. A saw-mill was put up. I include the cost of the R. R. to the Mary Kunkle tract. The road on the Mary Kunkle cost about $5,000 in 1847. The houses cost about $250 each. The improvements since 1847 I suppose would not fall short of $100,000.

I mean permanent improvements, viz: two complete coal
43 operations, engines, breakers, pumps, and all necessary for a

coal operation. The railroad has been sold to the Lehigh Valley R. R. some three years ago or more. I recollect no other improvements.

Lease Feb'y 19, 1863, coal lease. These are same parties as the other for the Mary Kunkle, for seven years from January 1st, 1863. Agreement, coal lease dated March 19, 1870. This was between myself and Mr. Fell and heirs of A. and E. S. Roberts. I was in possession from 1847 till now.

Cross-examination:

While I was there without a written lease the terms were the same as if a written lease was in existence. About one-third of a mile of the first railroad of Roberts was on Mary Kunkle. The coal from the mines passes over the Lehigh Valley R. R.; before that time over the Hazleton R. R. I can't tell the amount of coal taken out of these mines. I suppose it would go over one million of tons. I don't know the number of men. At first it might
44 have been one hundred, two hundred, three hundred—probably average two hundred or three hundred men.

The Cranberry mine is in use. The Crystal Ridge mine is not. We first sunk a shaft sixty feet deep and struck a vein there of eighteen feet of coal; then sunk a slope and reached the same vein about eighteen feet of workable coal. We have worked over about one-half of that territory.

I paid forty or forty-five cents royalty. The Crystal Ridge is one-half mile from Cranberry.

The improvements on the tracts are in good working order, kept up in good order. I can't say how much I have paid Roberts under these leases. I suppose $500,000, or thereabouts.

I leased the whole Mary Kunkle tract. Had privilege of cutting timber. The timber is all off it now. I think it is mentioned in the lease. I suppose my rights are all defined in my lease. We may have gone outside of the lease, as we had confidence
45 in each other.

We opened the Crystal mine in Feby., 1850, Cranberry in March, 1847. The first charge on my ledger I refer to.

In chief:

When I said $500,000 for royalty paid Roberts, I had in my mind all the Kunkle tracts; about two-thirds to three-fourths of that amount was from Mary Kunkle. The gangways from Mary Kunkle ran into Christian Kunkle.

The foregoing is a correct presentation of such parts of the evidence before the court and jury, on the trial of this cause on the part of the defendant, as are omitted from the transcript of record heretofore filed and printed.

And it is agreed that the same shall be filed of record in the Supreme Court with like effect as if the same were added upon suggestion of diminution of record, and that with this addition the record is complete and contains all that is necessary to the hearing in this court.

J. O. PARKER,
Of Counsel for Plff.

ARMSTRONG & LINN,
Of Counsel for Defts.

IN THE

Supreme Court of the United States.

WM. M. KING, *et al.*, Heirs at Law of JAMES TURNBULL, deceased, Plaintiff in Error,

vs.

ARIO PARDEE, EDWARD ROBERTS, *et al.*, Executors of A. S. ROBERTS, deceased; EDWARD ROBERTS, JR., *et al.*

COUNTER STATEMENT AND ARGUMENT OF DEFENDANTS IN ERROR.

GEORGE W. BIDDLE.
ARMSTRONG & LINN.
Attorneys for Defendants in Error.

Gazette and Bulletin Printing House, Williamsport, Pa.

Supreme Court of the United States.

No. 173.

WM. M. KING, *et al.*, Heirs at Law of JAMES TURNBULL, deceased, Plaintiff in Error,

vs.

ARIO PARDEE, EDWARD ROBERTS, *et al.*, Executors of A. S. ROBERTS, deceased; EDWARD ROBERTS, JR., *et al.*

COUNTER STATEMENT AND ARGUMENT ON BEHALF OF DEFENDANTS IN ERROR.

This action is one of several instituted by the same plaintiff against these and other defendants, claiming property of immense value in the coal fields of Pennsylvania, and bears about it every mark of a merely speculative adventure.

The plaintiff claims the one undivided eighth part of four hundred and thirty-nine and one-half acres of land surveyed in the warrantee name of "Mary Kunkle," and situate in Hazel Township, Luzerne County, Pennsylvania, one of the most productive and valuable sections of the coal field.

Before the discovery of coal upon the land, and during all the time when the title remained in the ancestors of the plaintiff, it had scarcely more than nominal value.

The plaintiff claims as the heir at law of his father, Alexander Turnbull, Jr., who died in a hospital in Philadelphia in 1835 (p. 38), insolvent (Ad., p. 1).

The pedigree of the plaintiff was not disputed.

The title down to the conveyance of Drysdale and wife,

and Margaret Turnbull, to Roberts, is common to the title of both parties. It runs thus:

February 5, 1789.—Warrant to "Mary Kunkle."

July 19, 1791.—Survey.

August 13, 1791.—Patent, Commonwealth of Pennsylvania to "Mary Kunkle," (pp. 25, 26, 27).

The title being out of the Commonwealth, the land was duly assessed for taxes, and on default of payment was sold on the first day of July, 1820, by the Treasurer of Luzerne County, and purchased by one Jacob Cist, to whom the Treasurer conveyed as follows:

November 10, 1820.—Deed (p. 28), G. M. Hollenbach, Treasurer, to Jacob Cist, for the tract surveyed to "Mary Kunkle," for the sum of *seven dollars and one and a half cents.*

October 29, 1823.—Deed of assignment, endorsed upon the above deed for the same, Jacob Cist to Joseph Mussie (p. 29); consideration $1.00.

May 28, 1824.—Deed of assignment, endorsed upon the same deed, Joseph Mussie to Alexander Turnbull (p. 30); consideration $1.00.

July 10, 1826.—Alexander Turnbull died (p. 8).

August 1, 1826.—Letters of administration on his estate granted to William Drysdale (p. 31).

Record of judgment in Luzerne County, to No. 46 April T., 1827, as follows:

WILLIAM DRYSDALE, Administrator of Alexander Turnbull, deceased,

vs.

JAMES TURNBULL and ALEXANDER TURNBULL, Jr., (pp. 31–33).

February 20, 1827.—Judgment, $4,890.00.

January 4, 1827.—Fi. Fa. issued and levy (p. 35), *inter alia*, upon the "Mary Kunkle" tract.

August 14, 1827.—Sold for $25.00 for each tract men-

tioned, to John N. Conyngham, attorney for plaintiff (p. 35).

April 14, 1828.—Deed (p. 35), N. Hurlbut, Sheriff, to John N. Conyngham, for eleven tracts, and *inter alia* "Mary Kunkle;" consideration $275. Recorded January 13, 1832.

July 10, 1828.—Deed (p. 37), John N. Conyngham and wife to William Drysdale, for eleven tracts, *inter alia* "Mary Kunkle;" consideration $290. Recorded January 13, 1832.

October 21, 1846.—Deed (p. 39),

William Drysdale and wife, and Margaret Turnbull,
to
Algernon S. Roberts and Edward Roberts,

For the Mary Kunkle and Sarah Kunkle tracts. Consideration $46,500.00. Recorded in Luzerne County, November 23, 1846.

Alexander Turnbull, the elder, left a widow, Margaret, who died in 1832 (p. 8), and four children, James, Alexander, Jane and Margaret. All the title of James and Alexander had been sold upon the judgment above mentioned, and was purchased by J. N. Conyngham, who conveyed the same to William Drysdale, who married Jane.

Thus all interests of Alexander Turnbull were embraced in the conveyance to Roberts.

The Messrs. Roberts, having thus obtained title in October, 1846, leased the "Mary Kunkle" tract to Ario Pardee and J. Gillingham Fell, by lease dated the 23d day of March, 1847, (Ad., p. 5).

The lessees entered into immediate possession (Ad., p. 13), and during the year 1847 "went on and did the work necessary to open a mine, drove a drain, erected a breaker, and commenced shipping coal." At the same time the Messrs. Roberts put up about twenty houses upon the tract, and built a railroad from Hazleton to the same. The improvements put up by Roberts in 1847 cost over $30,000, and since 1847 the improvements would not fall short of $100,000.

The possession of the whole tract by Roberts and their

lessees has been from that time to this actual, notorious, uninterrupted, and adverse, and during this time the lessees have paid (p. 14) to Roberts about $500,000 royalty, of which about two-thirds or three-fourths was from the "Mary Kunkle."

Both parties claim under the "Alexander Turnbull" title.

The plaintiff's position, in brief, is, that William Drysdale, being the administrator of the estate of Alexander Turnbull, Sr., held in trust the title conveyed to him by Conyngham, and that the Messrs. Roberts, as grantees of Drysdale, could only hold the title subject to that trust.

The defendants relied upon the following legal propositions, either one of which they claimed would conclusively bar the plaintiff's action:

First. That the trust set up by the plaintiff is too stale to be enforced by a court of equity.

Second. The act of Assembly of Pennsylvania of April 22, 1856, entitled "An act for the greater certainty of title and more secure enjoyment of real estate," is a conclusive bar to the plaintiff's action.

Third. That the plaintiff's right is barred by the statute of limitations.

Fourth. That the deed (Ad., p. 1) of Alexander Turnbull, Jr., to William King, dated November 28, 1827, divested the title of Alexander Turnbull, and the plaintiff, who claims under him, and as his heir, cannot recover in this action.

Fifth. That the plaintiff could not recover in this action.

The ruling of the court was as advantageous to the plaintiff as the facts in the case would at all warrant. They submitted to the jury, as matters of fact, questions which they would have been entirely justified in ruling against him, as matters of law.

Whatever trust there was, if any, sprang out of the deed of Conyngham to Drysdale (p. 37).

Clearly there was no express trust, for the deed conveyed

an absolute and unlimited title in fee to Drysdale, his heirs and assigns.

Conyngham, as attorney for the estate of Turnbull, necessarily held the title he acquired in trust for the estate; but the estate was not bound to accept the title, and might have elected to accept the purchase money instead. There was nothing to forbid Drysdale from purchasing from Conyngham in his own right, if the sale were *bona fide*, and the purchase money paid from his own funds; he was not a purchaser, as administrator, at his own sale, nor at any sale of the estate.

If the title in his hands is to be affected with any trust, it must be a resulting trust, arising from the payment of the purchase money out of the funds of the estate, and the *onus* was upon the party alleging the trust to show such payment, of which there is not the slightest evidence in this case. The acceptance by Drysdale from Conyngham of a deed in fee was itself evidence of a disavowal of any trust, and this disavowal became matter of record and notice to all the world when the deed was recorded, in January, 1832.

But, for the purposes of this argument, a resulting trust may be admitted. It was so held by the court, and is not now in controversy.

What, then, is the law as to laches in such case? for it is to this part of the ruling only that the plaintiff can have ground of objection. It would seem to be settled beyond all dispute that, as the court said, "Such rights do not live forever. If they are not asserted in a reasonable time they die."

The court fixed the limitation of twenty-one years as the reasonable time within which the trust must be asserted. This was liberal in the extreme, and much longer than has been held in many cases sufficient to bar the trust.

Some consideration of the dates involved will assist the court in determining whether the instructions of the court below were not as liberal toward the plaintiff as the law would permit.

The trust arose under the deed of Conyngham to Drysdale, July 10, 1828, and recorded January 13, 1832. The deed, Drysdale, *et al.*, to Roberts (p. 39), was executed and delivered October 21, 1846, and was recorded November 23. 1846. The suit was brought February 24, 1871. It thus appears that there had elapsed before the bringing of the suit:

From the deed to Drysdale	42	years,	7	months,	14 days.
From record of same	39	"	1	"	11 "
From deed, Drysdale, *et al.*, to Roberts	24	"	4	"	3 "
From record of same	24	"	3	"	1 "

It further appears that all the parties who could claim under the trust were of full age in 1826, when the trust arose (pp. 8, 9).

Alexander Turnbull, Sr., died July 10, 1826. His widow, Margaret, died in 1832. He left four children, viz:

James, who never married; died 1855, aged 64 years.

Jane, who married Wm. Drysdale; died 1867, aged 74 years.

Alexander, father of plaintiff; died 1835, aged 37 years.

Margaret, who never married; died 1864, aged 64 years.

At the death of their father James was 37 years of age, Jane 32, Alexander 27, Margaret 22.

At the date of the deed from Conyngham to Drysdale, Alexander, father of the plaintiff, was about 29 years of age, and in the full vigor of his life. The title had been in Drysdale seven years, and had been of record for three years before his death.

Alexander, the plaintiff, was 13 years of age at the death of his father. He states (p. 39): "I left the United States April 1, 1843. I went to the Island of St. Thomas, West India Islands." He was then 21. How long he remained there does not appear, but there is nothing to show it was more than a visit. His mother (p. 9) says: "He left here (Philadelphia) for Mexico in 1850." At that time he was 28 years of age, and the title had been vested in Drysdale for

22 years, and had been upon record for 18 years. Not only so, but Drysdale, and Alexander Turnbull's two sisters, Jane and Margaret, had conveyed, in October, 1846, to Roberts, and the deed was recorded in November of the same year, for the consideration of $46,500, a sum sufficiently large to attract the attention of any one having the most remote possible interest in the land, and especially when accompanied by open and notorious possession, and an expenditure by the purchasers upon the premises in the next year of $30,000, and continuous and large expenditures every year thereafter.

It is not to be credited that the plaintiff had no knowledge, nor any reasonable means of knowing that the land was adversely held.

Nor is it to be overlooked that this action, instituted in 1871, was not brought until every party whose testimony could have thrown any light upon the transaction was dead.

William Drysdale (p. 10) died at Tamaqua in 1836, and Jane, his wife, at Philadelphia in 1867.

These facts being undisputed, what possible complaint can the plaintiff find with a charge which gave to him the chances of a verdict, upon the showing of facts which would so clearly have justified the court in withdrawing the case from the jury?

The first legal proposition relied on by the defendants, namely, that "the trust set up by the plaintiff is too stale to be enforced by a court of equity," is fully sustained by numerous decisions of the courts, both of the United States and of the several states of the Union, and of England. It is necessary to the security of title, and to maintain the transmissibility of real estate, that the owner of the legal title should not have his estate rendered comparatively valueless, or that purchasers should be kept at bay for a long series of years by an implied trust depending solely upon inference, and of which there is no direct evidence.

Within some reasonable period of time, he who claims title

under a resulting trust should be required to assert it, or otherwise be barred by laches.

In Pennsylvania both the Legislature and the courts have fully recognized this policy, and its importance in promoting the improvement of real property, and the development of its resources and its wealth, by removing, after a sufficient lapse of time, every cloud upon the title, occasioned by an implied trust, which has lain dormant and has not been asserted within a reasonable time.

The following decisions sustain the original proposition:

In Perry on Trusts, a treatise of great value and of acknowledged authority, the author sums up the result of the several cases which he cites:

"Time does not bar a direct trust where the relation of trustee and *cestui que trust* is admitted to exist, but diligence must be used to establish a constructive trust on the ground of fraud. A court of equity will refuse its aid to stale demands, where a party has slept upon his rights, or has acquiesced for a great length of time. And so a constructive trust will be barred by long acquiescence, although the fraud was evident and the relief was originally clear."

"It is difficult to state as a general proposition what length of time will bar relief from the consequences of a fraud. It is necessarily subject to the equitable discretion of the court, and must depend upon the nature of each case, and the circumstances of the parties."—Sec. 228.

And in section 229 a large number of cases are cited in illustration of the principle, that whilst diligence is demanded of the *cestui que trust*, yet each case must be adjudged according to its own circumstances.

Although, in section 228, the author mentions trusts which originate in fraud, yet we apprehend that a greater degree of diligence is required when the implication arises from other circumstances. The cases cited in this branch of the argument will establish this proposition clearly.

In Graham vs. Donaldson, 5 Watts, 451, a case where the

plaintiff in an execution purchased the real estate of the defendant at sheriff's sale, under an agreement that he would reconvey the same to the defendant upon payment of the judgment, it was held that after a delay of ten years, during which the purchaser had made valuable improvements, and died in possession, the *cestui que trust* could not recover. Assuming the validity of the trust. the court decide that the delay under the circumstances was a bar to the enforcement of the trust.

Strimpfler vs. Roberts, 6 Harris, 283, is a case in which the doctrine of implied trusts, as applicable to titles immediately derived from the Commonwealth, was carefully considered.

At a very early period in the history of land office titles it was held that where a warrant was granted in the name of one person, and the purchase money and expenses of surveying paid by another, the warrantee was a trustee for the person who paid the purchase money, &c., and that the latter was entitled to a patent from the Commonwealth.

In this case the question was distinctly raised whether lapse of time would bar the right of the *cestui que trust* from recovering possession, as against the warrantee and those claiming under him. The court held that the right of him who paid the purchase money is gone unless he takes possession of the land, or brings ejectment to recover it, in 21 years.

The case was elaborately argued by counsel, and carefully considered by the court. It is but the application of the rule respecting the effect of laches upon implied trusts, to titles held under grants from the Commonwealth, made according to the practice in the land office.

The implied trust arising from the payment of the purchase money was not doubted, and the principal question was whether it would be affected by laches.

This decision, with the series of cases directly following it, and asserting the same principle, are regarded by us as having an important bearing upon the question under discussion, because they show with what strictness the courts in Penn-

sylvania hold *cestuis que trust*, who are setting up constructive trusts, to the exercise of due diligence in the prompt and timely assertion of their rights under the trust.

To the same effect is the case of Brock vs. Savage, 7 Casey, 410, wherein the doctrine of Strimpfler vs. Roberts is discussed and reaffirmed.

Again, in McBaron vs. Glass, 6 Casey, 133, reaffirming Strimpfler vs. Roberts, it is ruled that prior to the act of 22d April, 1856, a resulting trust could not have been enforced after the lapse of 21 years from the time at which it originated.

The case of Waterman vs. Brown, 7 Casey, 161, is to the same effect.

Indeed, so strictly has this rule been held in Pennsylvania, that in the case of Todd vs. Cambell, 8 Casey, 250, it was held that although ordinarily questions of fact are for the determination of a jury, yet in cases of implied trust, where the judge is of opinion that the facts do not warrant its enforcement, it is the duty of the court to give to the jury a binding instruction to that effect.

Although this case does not involve the question of laches, yet it shows the disinclination of the court to uphold implied trusts resting in parol, except in cases where the proof is clear and convincing.

In Fox vs. Lyon, 9 Casey, 481, it is declared by the court that the case of Strimpfler vs. Roberts was decided on great consideration, and reaffirmed in Brock vs. Savage, showing that the principle asserted was regarded as important, and has been adhered to against any attempt to overrule it.

To the same effect is the case of Halsey vs. Tate, 2 P. F. Smith, 311; and at the conclusion of the opinion of the court in this case a number of authorities are cited in support of the principle.

So also in the case of Lingenfelter vs. Richey, 12 P. F. Smith, 123, the same doctrine is again reasserted, and it is declared that the party claiming under an implied trust must

give clear and convincing proof of the trust in his favor, and also show that within 21 years he has exercised such exclusive acts of ownership, and taken such possession of the trust property within 21 years as would prevent its extinguishment.

One of the earliest cases in Pennsylvania wherein the doctrine of implied trusts as to real estate came to be discussed before the Supreme Court, was the case of Peebles vs. Reading, decided in 1822, and reported in 8 Serg. & Rawle, 484. The entire subject, with its incidents, is discussed in the long, elaborate and exhaustive opinion of Judge Duncan, wherein it is asserted "that a party claiming under an implied trust must show himself to be prompt and eager in its assertion, and that laches for any considerable time in the assertion of his rights, where the trustee, or those claiming under him, is in possession, and especially where valuable improvements have been made under a title held by or under the trustee."

The doctrine here so distinctly asserted has never been departed from, but has grown in strength and distinctness since the decision in that case, until now it has become distinctly held that a *cestui que trust*, holding under an implied trust, must make distinct assertion of his right within a period in no instance exceeding 21 years, or otherwise be barred from an enforcement of his claim. This doctrine, so held and settled in Pennsylvania, is in entire harmony with the decisions of the courts of other states and of the Federal courts, and has become a rule universally accepted for the security of title, the prevention of frauds, and the transmissibility of the title to real estate. In Pennsylvania a purchaser, therefore, even before the passage of the act of 1856, might feel secure in purchasing from one who is apparently a trustee under some implied trust, where such trustee had been in possession for 21 years; had made improvements, and no distinct claim had been made by an action at law, or the taking possession by the alleged *cestui que trust* within that time.

In Piatt vs. Vattier, 9 Pet., 405, thirty years adverse possession, without the acknowledgment of any trust, was held to be a clear bar to the action, independently of the statute of limitations.

Justice Story, delivering the opinion of the court, states it as the established doctrine of courts of equity, that it will not entertain stale demands. "Nothing can call forth this court into activity but conscience, good faith, and reasonable diligence. When these are wanting, the court is passive, and does nothing. Laches and neglect are always discountenanced." And see authorities there cited.

In McKnight vs. Taylor, 1 How, 161, Piatt vs. Vattier is cited at length and approved; and upon the doctrine there announced it was held, that where no steps are taken in nineteen years, and the delay was unaccounted for, "the claim to have the trust executed was stale, and equity would not interfere."

But whatever view may be taken of the position just discussed, it is submitted that the act of 1856 (P. L. 532, § 6), entitled "An act for the greater certainty of title and more secure enjoyment of real estate," is a statutory limitation which conclusively bars the plaintiff's action. Its scope and purpose is well expressed in the preamble:

"Whereas, Public and private prosperity and happiness requires that titles to real estate should be certain and secure, and that the people should acquire, hold and improve their homesteads and estates in the confidence that they will not be lost by secret and unknown claims, or by fraud and perjury, and also alienate them at their full value without abatement for legal doubts and uncertainties."

It is a general statute of repose, which has established a well defined policy of the State.

It provides a limitation of action as to persons *non compotes mentis*, imprisoned, *femes covert*, and minors, purchasers and mortgagees, and *terre tenants*. It requires certain declarations of trusts and agreements as to lands to be in writing;

makes the probate of a will conclusive as to real estate, unless within five years an action to contest the validity of the will be commenced and duly pursued; regulates the rights of distribution and subrogation, and allotments in partition, &c.

The sixth section declares the statutory limitation in the enforcement of trusts, and is as follows (P. L. 532, § 6):

"SECTION 6. That no right of entry shall accrue or action be maintained for a specific performance of any contract for the sale of any real estate, or for damages for non-compliance with any such contract, or to enforce any equity of redemption after re-entry made for any condition broken, or to enforce any implied or resulting trust as to realty, but within five years after such contract was made, or such equity or trust accrued, with the right of entry, unless such contract shall give a longer time for its performance, or there has been in part a substantial performance, or such contract, equity of redemption or trust shall have been acknowledged by writing to subsist by the party to be charged therewith within the same period: *Provided*, That as to any one affected with a trust by *reason of his fraud*, the said limitation shall begin to run only from the discovery thereof, or when by reasonable diligence the party defrauded might have discovered the same, but no bona fide purchaser from him shall be affected thereby, or deprived of the protection of the said limitation: *And provided*, That any person who would be sooner barred by this section shall not be thereby barred for two years from the date hereof."

The policy thus established in the State has received the most unqualified commendation of the court.

The enactment is clear and express; nor is there anything in the *proviso* which affects any question raised in this case, unless, indeed, to confirm our position. Even in a trust arising *mala fide*, the limitation begins to run from the time when "by reasonable diligence the party defrauded might have discovered the same." And it is expressly provided that "no bona fide purchaser from him (the trustee) shall be

affected thereby, or deprived of the protection of the said limitation." The bona fides of the purchase by Roberts from Drysdale has not been subjected even to the shadow of a doubt.

Whether this trust arose in 1828, when Drysdale received the conveyance from Conyngham, or in 1832, when it was recorded, or in 1846, when Drysdale conveyed to Roberts, is, as to this question, wholly unimportant.

Whether the proviso as to "reasonable diligence" applies to any other trust than one founded in *fraud* need hardly be argued, for reasonable diligence as a question of fact was submitted to the jury.

In Douglass vs. Lucas, 63 P. S. R., 9, it is held: "That the act of 1856 contemplates that an action is to be maintained by the *cestui que trust* against the trustee in actual or constructive possession." Since 1846 Drysdale nor the heirs of Alexander Turnbull have had no possession, either actual or constructive. The plaintiff, therefore, in view of this statute, had no cause of action against these defendants; his only remedy was against the trustee. Admitting that Drysdale held the estate in trust when he sold it, the heirs could have required him to account for all the purchase money over the amount it had cost him. This was their remedy, and it was adopted as to five of the tracts sold in 1835, by Drysdale and wife, and Margaret Turnbull, to Dr. Moore, for $26,320. There was not even an attempt to hold the property in the hands of Dr. Moore. Drysdale's Appeal, 14 Pa. St., 531.

After the sale of the property, and the delivery of the possession to the purchaser, the right of the heirs was a mere equity, and if not pursued in time it died.

In Best vs. Campbell, 62 Pa. St. Rep., 476, approving Clark vs. Trindle, 52 Pa. St. Rep., 492, it is held: "Under the act of 1856, if there be neither entry nor possession taken by the party to whom the trust results in five years after it accrues, and no acknowledgment in writing, it cannot

be asserted against the trustee." Much less can it be asserted against a bona fide purchase from him.

In Maul vs. Rider, 51 Pa. St. Rep., 377, the act of 1856 was held to apply to a co-tenant who was trustee *ex-malificio* of his fellow's part.

Clark vs. Trindle is again approved in McNinch vs. Trego, 73 Pa. St. Rep., 52, and again, with other cases, in Barrett vs. Bamber, 81 Pa. St. Rep., 247, decided in 1876. Indeed, so uniform are all the decisions in sustaining the limitations of the act of 1856, that, so far as it can affect any right involved in this action, the question has passed out of the range of discussion.

Third. The plaintiff's right to recover is conclusively barred by the statute of limitations.

The statutory limitation in Pennsylvania is 21 years. Every question of fact upon which the running of the statute depends was submitted to the jury.

It is quite unnecessary to cite authorities, further than to indicate the rule as held in Pennsylvania.

Twenty-one years adverse possession is not only available as a bar to an action, but constitutes of itself an affirmative title, which will sustain ejectment.

"To give title under the statute, there must be an actual and uninterrupted occupancy for twenty-one years." Sorber vs. Willing, 10 Watts, 141.

"To confer title under the statute of limitations, there must be an uninterrupted adverse possession for twenty-one years." Shaffer vs. Lowry, 25 Pa. St. Rep., 252.

"It must be hostile to all the world." Long vs. Mast, 11 Pa. St. Rep., 189.

In Mercer vs. Watson, 1 Watts, 330, it was held: "Nothing short of an actual, continuous, visible, notorious, distinct, and hostile possession for twenty-one years will give title under the statute of limitations." This broad rule, so emphatically expressed, was fulfilled by the evidence in this

case, and was submitted in terms equally comprehensive to the determination of the jury.

In Neel vs. McElhenny, 69 Pa. St. Rep., 300, it was held: "Possession is presumed to be adverse, except as against a co-tenant, until some evidence to the contrary is given." There was not even a spark of evidence to this effect.

Fourth. The deed of Alexander Turnbull, Jr., to Wm. King, in 1827, divested his title. It was in fact a deed of assignment for the benefit of his creditors, but "the balance, if any, was to be paid over to Mary Turnbull, his wife, her executors, administrators or assigns" (Ad., p. 2). This action was brought in March, 1871, by James Turnbull, her son, in her lifetime, for she was sworn (p. 9) as a witness in the case in October, 1871, and for aught that appears she may be living yet. After the execution of that deed, Alexander Turnbull, Jr., had no estate or interest left in him, and if he had no interest then the trust arising under the deed from Conyngham to Drysdale could not enure to his benefit, and when he died, in 1835, nothing descended to the plaintiff, who claims as his heir. The court would, therefore, have been fully justified in holding that upon this ground alone the plaintiff could not recover.

It is not deemed necessary to prolong this argument to discuss, at much length, the fifth proposition, which, in the view of the defendants, was an insuperable obstacle to the plaintiff's recovery, viz: that the plaintiff could not recover in this action.

Whatever were the rights of the plaintiff, they were purely equitable. There is no pretense of any right in the plaintiff except under the implied trust in Drysdale. No doubt could arise upon the question, except that the act of June 1, 1872, Revised Statutes, 173, § 914, declares: "That the practice, pleadings, and forms and modes of proceeding in civil causes, other than equity and admiralty causes, in the Circuit and District courts, shall conform as nearly as may be to the practice, pleadings, and modes and forms of proceeding ex-

isting at the time in like causes in the courts of record of the State within which such Circuit and District courts are held."

It is admitted that in Pennsylvania ejectment may be sustained upon an equitable title.

This action was commenced on the 24th of February, and defendants appeared by counsel on the 13th of March, 1871.

The jurisdiction of the court and the rights of the parties are to be determined as of that day.

It does not appear that the act was intended to have any retroactive effect, and such effect will not be given, unless it clearly appear that such was the intention of the Legislature, even when the act is in terms limited to the remedy only.

Similar acts have been in force since the general judiciary act of 1789, but the purpose has been always apparent to maintain in the Federal courts the distinction between their jurisdictions at law and in equity.

The purpose of the act of 1872 is well expressed in Nudd vs. Burrows, 1 Otto, 441: "To bring about uniformity in the law of procedure in the Federal and State courts of the same locality." But in Bliase vs. Garlington, 2 Otto, 8, a bill in equity, the court say the act of 1872 "has no application to this case, because it is in equity, and equity and admiralty causes are in express terms excepted from the operation of the act.".

In Indianapolis Rail Road vs. Horst, 3 Otto, 301, the court, commenting upon the words of the act, "as near as may be," say: "This indefiniteness may have been suggested for a purpose, giving to the Federal judges the power to reject any subordinate provision in State statutes which, in their judgment, would unwisely encumber the administration of the law, or tend to defeat the ends of justice in their tribunals."

In Noonan vs. Lee, 2 Black, 509, it is said: "The equity jurisdiction of the courts of the United States is derived from the constitution and laws of the United States. Their forms and rules of decision are the same in all the states; their practice is regulated by themselves, and by rules established

by the Supreme Court. This court is invested with authority to make such rules. In all these respects they are unaffected by State legislation." Payne vs. Hook, 7 Wall, 425.

In Burnett vs. Butterworth, 11 How, 757, the very question as raised in this case, under the practice in Pennsylvania, was discussed in a case arising under the laws of Texas, where no distinction exists between law and equity. The court say: "Whatever may be the laws of Texas in this respect, they do not govern the proceedings in the courts of the United States. And although the forms of proceedings and practice in the State courts have been adopted in the District courts, yet the adoption of the State practice must not be understood as confounding the principles of law and equity, nor as authorizing legal and equitable claims to be blended together in one suit. The constitution of the United States, in creating and defining the judicial power of the general government, establishes this distinction between law and equity; and a party who claims a legal title must proceed at law, and may undoubtedly proceed according to the forms of practice in such cases in the State court. But if the claim is an equitable one, he must proceed according to rules which this court has prescribed, regulating proceedings in equity in the courts of the United States."

In an action of ejectment in Tennessee, Robinson vs. Campbell, 3 Wheat, 212, it was ruled: "If the State laws have given a legal remedy founded on an equitable title, the equity jurisdiction of the Circuit Court is not affected thereby." Todd, J., in commenting upon the provisions of the judiciary act of 1789, and the act of 1792, which conforms the practice of the Federal courts to that of the states, says: "In some of the states in the Union no court of chancery exists to administer equitable relief. In some of those states courts of law recognize and enforce in suits at law all the equitable claims and rights which a court of equity would recognize and enforce; in others all relief is denied, and such equitable claims and rights are to be considered as mere nullities at

law. A construction, therefore, that would adopt the State practice in all its extent would at once extinguish in such states the exercise of equitable jurisdiction. The acts of Congress have distinguished between remedies at common law and in equity, yet this construction would confound them. The court, therefore, think that to effectuate the purposes of the Legislature, the remedies in the courts of the United States are to be at common law or in equity; not according to the practice of the State courts, but according to the principles of common law and equity as distinguished and defined in that country from which we derive our knowledge of those principles." Thompson vs. Central Ohio R. R. Co., 6 Wall, 134.

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